

Exhibit 1

**EXPERT REPORT OF DAVID FRANKLYN IN THE MATTER OF
PHI THETA KAPPA HONOR SOCIETY V. HONORSOCIETY.ORG,
INC.**

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I. ASSIGNMENT AND BACKGROUND

Founded in 1918, Phi Theta Kappa Honor Society (“Phi Theta Kappa”) is the oldest two-year university scholastic achievement society in the country.¹ As far as I am

¹ Plaintiff’s Second Amended Complaint at p. 4, para. 17.

aware, it is widely recognized as the most established and prestigious scholastic achievement society among community colleges, being the only honor society that is formally affiliated with and endorsed by the American Association of Community Colleges.² Given that Phi Theta Kappa is a two-year college (or otherwise defined as community college, junior college, or technical school) scholastic achievement society, a market which Phi Theta Kappa alleges Honor Society to be unfairly and dishonestly appropriating, two year colleges are the relevant universe for analysis.

Phi Theta Kappa alleges several elements of trade dress that it claims have been in continuous use since 1924, and which are unique to it as a scholastic achievement society. The elements that I am analyzing, claimed independently and in combination are:

- a. A palette comprising predominantly navy blue and gold;
- b. Branding and marketing featuring a wreath of leaves;
- c. Regalia including stoles comprising a gold material with emblematic imagery at the bottom in navy blue.³



PHI THETA KAPPA
HONOR SOCIETY ⁴

² Plaintiff's Second Amended Complaint at p. 4,, para. 19.

³ Plaintiff's Second Amended Complaint at p. 9, para. 35.

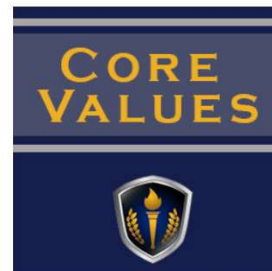
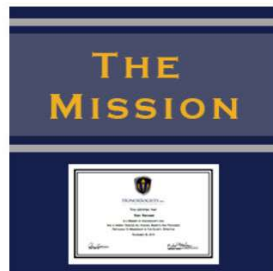
⁴ See:

https://www.ptk.org/wp-content/uploads/2021/09/Phithetakappa_Logo_Stacked_Notag_Color_CMYK_300ppi.png.



5

Honor Society is purportedly infringing on Phi Theta Kappa's signature trade dress by utilizing the same common elements in its advertising and regalia:



6

⁵ See: https://store.ptk.org/wp-content/uploads/85845366.Def_L-2.png.

⁶ See:
<https://www.honorsociety.org/cares>.



7

As far as I have been able to discern through online research, navy blue and gold are not commonly used in the trade dress of two-year college scholastic achievement societies. I have attached a list of two-year college scholastic achievement societies and their respective regalia which share blue- and gold-adjacent color palettes.⁸ Although some may be reasonably described as “blue and gold”: (1) none use a darker or navy blue and gold in combination as do Phi Theta Kappa and Honor Society; and (2) those which do recognizably use blue and gold specialize in particular student sub-demographics (Delta Psi Omega: theater students; Psi Beta: psychology students; Delta Alpha Pi: disabled students).

I have been retained by counsel for Plaintiff Phi Theta Kappa Honor Society (“Phi Theta Kappa”) to provide analysis as to whether the trade dress claimed by Phi Theta Kappa in its Second Amended Complaint holds secondary meaning, and whether

⁷ See:

https://cdn.shopify.com/s/files/1/0091/2048/1331/products/3810808_1024x1024.jpg?v=1562591443.

⁸ See Appendix G attached.

Defendant HonorSociety.Org, Inc.'s ("Honor Society") branding creates a likelihood of confusion or actual confusion with Phi Theta Kappa's trade dress. Additionally, I have been retained to determine whether Honor Society is falsely advertising the nature of its organization and whether such representations materially affect relevant consumers' impressions of Honor Society.

II. STUDY AUTHORSHIP AND QUALIFICATIONS

I am currently a law professor at Arizona State University, with an appointment in the Sandra Day O'Connor College of Law. I am also the Executive Director of the McCarthy Institute at ASU Law, which is focused on scholarship and research in intellectual property law, with particular emphasis in the areas of trademark law, branding and consumer perceptions related to brands. I have published extensively on issues relating to intellectual property law and am editor-in-chief and co-author of McCarthy's Desk Encyclopedia of Intellectual Property Law.

Formerly, between 2018 and 2021, I held a joint appointment in both the law school and Ageno School of Business at Golden Gate University in San Francisco. Between 2000 and 2018, I was a law professor and Executive Director of the McCarthy Institute for Intellectual Property and Technology Law at the University of San Francisco and Director of the Center for the Empirical Study of Trademark Law (CEST).

I have consulted and/or qualified as an expert witness on behalf of clients in numerous cases involving consumer perception and behavior issues, including in matters in the United States (federal and state courts), Asia, the European Union, the Middle East, and South America. I have personally designed and executed numerous consumer perception surveys that have been accepted into evidence by state and federal courts.

In addition to my survey research experience, I hold a J.D. from University of Michigan Law School. Additional biographical material, including lists of testimony and publications, is provided in Appendix A.

For my engagement in this matter, I am being compensated a flat fee of \$130,000 for the preparation and fielding of these surveys through the completion of the expert report, plus approximately \$20,000 to cover sample costs incurred by our survey vendor. For my continued engagement in this matter past the completion of the report, I will be compensated at my standard rate of \$675 per hour. My compensation is not dependent upon the outcome of this proceeding.

III. SUMMARY OF OPINIONS

1. The results of the confusion survey indicate a net aggregate confusion rate of 22.58% between Phi Theta Kappa and Honor Society. Based on the results of the confusion survey, there is significant likelihood of confusion between Honor Society and Phi Theta Kappa.
2. The results of the secondary meaning survey indicate Phi Theta Kappa's claimed trade dress has a 39.93% net association among the current consumer universe, as well as a 31.91% net association across the total universe of current and prospective consumers. These results indicate that Phi Theta Kappa's trade dress carries substantial secondary meaning both among two-year college students and members of Phi Theta Kappa.
3. Honor Society's reputation among the relevant consumer universe, as would be consistent with scholastic achievement societies, overwhelmingly depends on the veracity of its many messages claiming prestige and associated benefits of membership. A supermajority of respondents exceeding 80% indicated that the

falsity of any of the messages would materially decrease their interest in joining Honor Society.

IV. GENERAL SURVEY METHODOLOGY

I conducted three surveys designed to test for (1) the likelihood of confusion between Phi Theta Kappa and Honor Society; (2) the secondary meaning in Phi Theta Kappa's trade dress; and (3) false advertising by Honor Society. Methodological features common to each of these surveys are denoted below. Further methodological elements specific to each of these surveys are discussed in their respective analysis sections.

The sample of survey respondents was recruited using a randomized selection of survey respondents who participate in online survey panels. Surveys conducted on the internet are well-accepted in both academic and market research, and are viewed by courts as standard and reliable methodological approaches to survey research. Indeed, online surveys are now the most common method of conducting market research among consumers. Companies and other entities regularly make decisions of importance based on data they collect through online surveys. Numerous U.S. District Courts have expressly endorsed and accepted into evidence online surveys in trademark cases.

I have designed, fielded, and reported on numerous internet surveys that have been accepted by state and federal courts.

The sample of panelists used in the surveys was provided by Dynata, a leading supplier of online samples for surveys.⁹ Dynata is highly regarded as a reputable source of consumers for online surveys within the field of market research. Dynata

⁹ Excepting the Group 2 portion of the Secondary Meaning Survey, which is explained in the corresponding section of this report.

utilizes appropriate industry procedures for ensuring the integrity and quality of its panels. Dynata ensures data integrity through their continued review of their panelists' behavior on a variety of metrics.

Double-Blind Interviewing

These studies were administered under “double-blind” conditions. Consumers were uninformed as to the purpose and sponsorship of the study. The survey is also, by definition, “blind” in that there is no person administering the surveys that can do anything to influence the results (unlike, for instance, a survey where someone asks a respondent questions in person or over the phone).

Interviewing Procedures and Data Processing

The online survey questionnaires were constructed, programmed, and hosted under my direction. My staff and I thoroughly tested the programmed surveys prior to any potential consumers receiving the invitations to participate in the surveys. Data was collected through the Qualtrics survey platform. The data sets showing each respondent's answers to all questions are provided in electronic form in Appendices E1, E2, and E3.

Quality Control

Several quality control metrics were employed to ensure the validity of responses. Respondents in all three surveys were required to complete the following quality checks, in addition to data cleaning and other quality assurance measures specific to each of the surveys, which are discussed in the individual survey sections of this report.

All respondents were asked a quality assurance question in which they were

given a set of standard rating options and were asked to instead type the word “north” in the blank next to the “other” option. The aim of this question was to ensure that respondents were actively paying attention to the survey and fully reading the question text.

For quality assurance, please type the word "north" in the blank next to the "Other" box below and then click to continue.

Strongly agree
Agree
Neutral
Disagree
Strongly disagree
Other

Continue

Respondents who clicked any of the first five options or who entered text that did not include “north” (regardless of capitalization) were immediately terminated (*i.e.*, not allowed to proceed further in the survey).

All respondents were also asked whether they typically wear eyeglasses or contact lenses when they read or shop.

Do you usually wear eyeglasses or contact lenses when you read or shop?

Yes

No

Continue

If they answered “yes” to the question, they were asked if they would be wearing their eyeglasses or contact lenses during the survey. The intent of this question is to make sure that respondents were viewing the stimuli in the same way as they would in their typical day-to-day reading and shopping.

Will you wear your eyeglasses or contact lenses for the remainder of the survey?

No

Yes

Continue

Respondents who indicated that they typically wear eyeglasses or contact lenses, but that they did not plan to for the remainder of the survey, were terminated.

Respondents were also provided with a detailed list of instructions and were asked to agree to these instructions in order to participate in the survey.

You have qualified to take this survey. Before continuing, please carefully read these instructions:

- * Please take the survey in one session without interruption.
- * Please keep your browser maximized for the entire survey.
- * While taking the survey, please do not consult any other websites or other electronic or written materials.
- * Please answer all questions on your own without consulting any other person.
- * Please do not guess. If for any question you don't know the answer, please write "don't know" or "not sure" in the answer box provided.

I understand and agree to the above instructions

I do not understand or do not agree to the above instructions

Continue

Consumers who indicated that they did not understand or agree to the instructions were terminated from the survey.

V. DETAILED ANALYSIS OF CONFUSION SURVEY RESULTS

OVERVIEW OF STUDY

To assess consumer perceptions relevant to likelihood of confusion in this case, I utilized a sequential lineup survey design (*e.g.*, a two-room *Squirt*). I determined this was the appropriate methodology for a confusion survey in this case for the following reasons. Generally, a *Squirt* survey is advisable when the parties sell or advertise their goods or services in physical or virtual proximity to each other. After reviewing Plaintiff's Second Amended Complaint as well as additional information in the marketplace and provided by the parties in this litigation, I believe it is highly likely

that consumers could encounter these brands in physical and/or temporal proximity. These reasons include, but are not limited to:

- Consumers are sent recruitment emails by Honor Society, often to their private student email addresses, when they are expecting recruitment emails from Phi Theta Kappa or other school-sanctioned organizations.¹⁰
- Consumers can encounter both brands on a single Google search results page, when searching “honor society”.¹¹
- Consumers can encounter both brands on campuses where Honor Society holds events.¹²

Given this proximity, the sequential lineup survey is appropriate to assess consumer confusion.¹³

In the survey I designed and conducted for this matter, I first showed survey respondents (who were past or prospective members of a 2-year college honor society or who had previously considered joining a 2-year college honor society) the current presentation of the Phi Theta Kappa website page from which members can order its stole and rope graduation regalia, as well as a post from Phi Theta Kappa’s Instagram account showing a member wearing the graduation regalia.

After seeing several “distracter” questions, consumers were then shown four different image pairs from honor societies in random order. As with the Phi Theta Kappa pages, each image pair consisted of a regalia sales page for the honor society and a social media post from the honor society’s Facebook or Instagram account showing a

¹⁰ See documents HS_136621 and HS_203039

¹¹ See documents HS_136621 and HS_203039

¹² HS_002834.pdf

¹³ “[A]two-room lineup ‘is an attempt to replicate the marketplace process of advertising exposure to a brand or trade dress, followed by being confronted in the market with both similar and differing brands or trade dresses.’” Jerre B. Swann, *Likelihood-of-Confusion Surveys*, Trademark and Deceptive Advertising Surveys, 66-67(Shari Seidman Diamond and Jerre B. Swann, 2nd ed. 2022) (citing McCarthy, *supra* note 5, § 32:177.

person wearing its regalia.

Survey respondents were randomly assigned to either the “test” cell or the “control” cell. Within the test cell, consumers saw the website pages and social media posts for Honor Society, The National Society of Leadership and Success, Alpha Sigma Lambda Honor Society, and National Technical Honor Society. For each set of website images, consumers were asked questions regarding the source, sponsorship, and affiliation, if any, between this scholastic achievement society and the scholastic achievement society from the first section of the survey (the Phi Theta Kappa image set). If consumers indicated they believed there was such a relationship, they were asked to provide a rationale for their thinking.

Within the control cell, everything was identical to the above, with the exception that all references to “Honor Society” in the Honor Society image set had been digitally altered to “Merit Society”, the blue and gold coloring was digitally altered to salmon pink and gray, and the wreath logo was removed.

SUMMARY OF KEY FINDINGS

After viewing the Phi Theta Kappa and Honor Society websites and social media posts, a significant percentage of survey respondents indicated that they mistakenly believed that the two organizations were related. Respondents’ verbatim, written responses further indicated that the confusion was specifically driven by the name “Honor Society”, the logo, and the colors navy blue and gold. After controlling for noise, these name, logo, and color associations were responsible for the majority of confusion among survey respondents.

SURVEY METHODOLOGY

The screenshots shown are reduced in size in order to fit on the pages of this

report. Survey images appeared larger on respondents' screens, and respondents had the ability to increase the size of the text or images using the zoom-in feature on their browser. A full set of screenshots for this survey can be found in Appendix D1.

The Relevant Universe of Interest

The interested universe of this study was individuals who have been enrolled in a 2-year college at any point during the past 5 years or who intend to enroll in a 2-year college at some point during the next 12 months, and who have joined an honor society or have been or will be interested in joining an honor society.

Consumers were first asked about their age.

What is your age?

Under 18
18-24
25-35
36-45
46-55
56-65
66+
Prefer not to answer

Continue

Respondents who selected "Under 18" were terminated from (*i.e.*, not allowed to proceed further in) the survey.

Next, respondents were asked their gender. Options for “Female” and “Male” were randomized.

What is your gender?

Female

Male

Other

Prefer not to answer

Continue

Respondents were then asked in which state they currently reside and were provided with a drop-down menu of options.

In which state do you currently live?

Continue

Those selecting “I do not live in the United States” were terminated.

Respondents were then asked if they or anyone in their household work in certain industries. Options other than “None of the Above” were randomized.

Do you or does any member of your household work for any of the following types of industries?

Please select all that apply.

Health insurance

Honor society or similar organization

Manufacture or distribution of kitchen appliances

Personal training/physical therapy

None of the Above

Continue

Respondents were terminated if they selected “honor society or organization”.

Respondents were then asked whether they have been enrolled in a 2-year college at any point within the past 5 years. The order of the options “Yes” and “No” was randomized.

Have you been enrolled in a two-year college at any point during the last 60 months (5 years)?

No

Yes

Don't know/unsure

Continue

In the next screen, they were asked whether they intend to be enrolled in a 2-year college at some point in the next 12 months. As before, the order of the options “Yes”

and “No” was randomized.

Do you plan to enroll in a two-year college at any point during the next 12 months?

Yes

No

Don't know/unsure

Continue

Respondents who did not answer “yes” to either of the above two questions were terminated.

If respondents answered “yes” to either of the above questions, they were asked if while enrolled in a 2-year college, they had joined an honor society or had been or will be interested in joining an honor society. The first three options were randomized.

In a previous question, you mentioned that you have been enrolled in a 2-year college at some point during the last 5 years or plan to be enrolled in a 2-year college at some point during the next 12 months.

While enrolled in a 2-year college, have you been or will you be interested in joining an honor society?

No, I have not been and will not be interested in joining an honor society

Yes, I have already joined an honor society

Yes, I have been or will be interested in joining an honor society

Don't know/prefer not to say

Continue

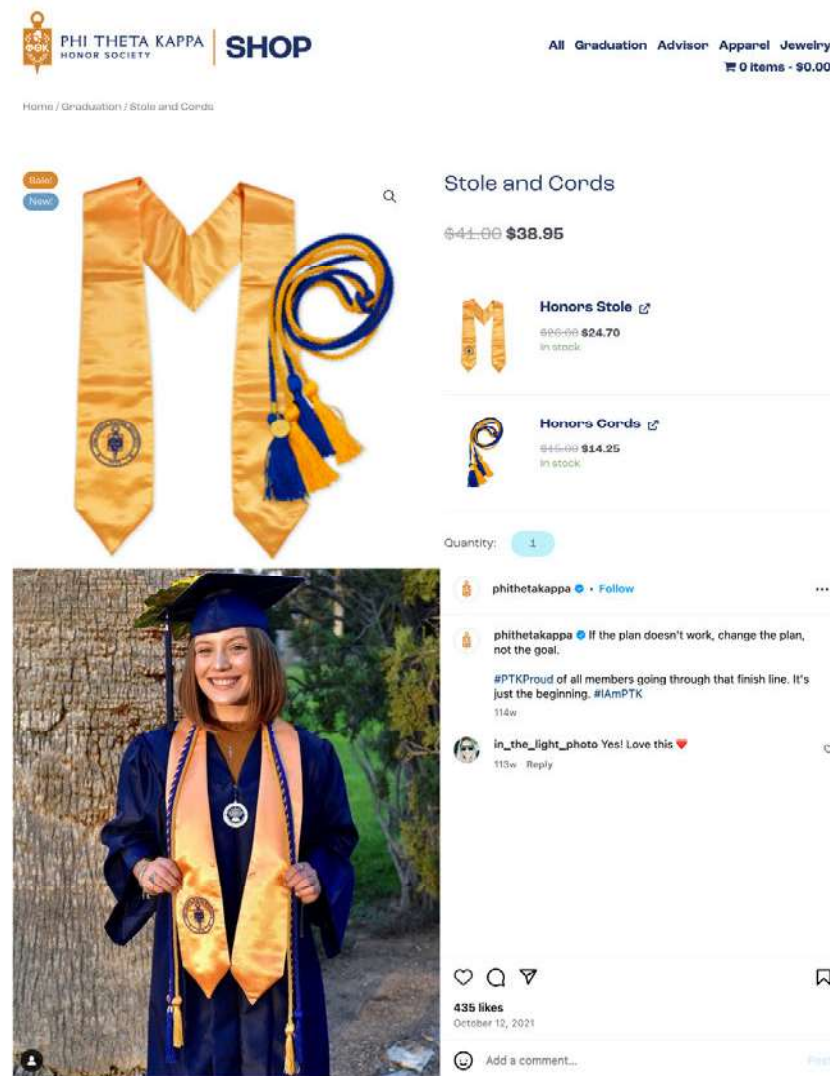
Only respondents who selected either “Yes, I have already joined an honor society” or “Yes, I have been or will be interested in joining an honor society” were allowed to continue in the survey.

Experimental Design

After passing screening criteria and qualifying for the survey, in the first section of the survey respondents were asked to review an image of the Phi Theta Kappa website and an image from its social media account, as shown below in a screenshot of the survey. A copy of the entire survey’s questionnaire is included in Appendix B1.

Please review the following images as if you are planning to join or have been a member of this scholastic achievement society. Please take as long as you need to view the images. You will be able to proceed once you see the 'Continue' button, which will appear momentarily.

Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



Were you able to view the images clearly?

Yes

No

Continue

While this and subsequent images are reduced in size to fit on these pages, the images appeared larger to consumers responding to the survey. Further, respondents were advised that they could adjust the size of the image using the standard zooming feature on their device. Respondents were also asked to state whether they could clearly see the images. Those indicating they could not see the images were terminated and not allowed to proceed further in the survey. Larger screenshots are provided within Appendix D1 of this report.

Respondents were instructed to “review the following images as if you are planning to join or have been a member of this scholastic achievement society.” To ensure review of the images, a 5-second minimum wait was required before respondents were allowed to continue to the next screen of the survey.

Respondents were then required to indicate that they understood that if, later in the survey, the survey refers to the organization from the first section, that it is referring to the organization previously seen on the last screen. Respondents were advised that on subsequent pages containing survey questions, a yellow button would be present that would allow respondents to re-view the images from the first section.

This concludes the **first section** of the survey. If later in the survey you are asked about the scholastic achievement society you were shown in the first section of the survey, we are referring to the organization that you just saw on the last screen. At any point in the survey, you can return to view the images from the first section of the survey by clicking the yellow button.

I understand

I do not understand

Continue

The second section of the survey consisted of “distracter” questions, just as a respondent might have a pause or break, or think of something else, between viewing websites. These questions also functioned to mask the intent of the survey. Respondents were asked how many hours per week they exercise.

For the second section of the survey, we would like to understand more about you.

On average, how many hours per week do you exercise?

I do not exercise

Less than 1 hour per week

1 to 2 hours per week

3 to 4 hours per week

5 to 7 hours per week

8 hours or more per week

Continue

Then respondents were asked how many hours per week they watch television.

On average, how often do you watch television?

I do not watch television

Less than 1 hour per week

1 to 2 hours per week

3 to 4 hours per week

5 to 7 hours per week

8 hours or more per week

Continue

In the third section of the survey, respondents were told that they would be shown several images, and after viewing each image that they would be asked a series of questions. Respondents were also instructed not to guess with their answers, and to instead write “don’t know” or “not sure” in the answer box if they did not know the answers.

For the **third section** of the survey, you will be shown several images. After viewing each image, you will be asked a series of questions.

Please do not guess. If for any question you don't know the answer, please write "don't know" or "not sure" in the answer box provided.

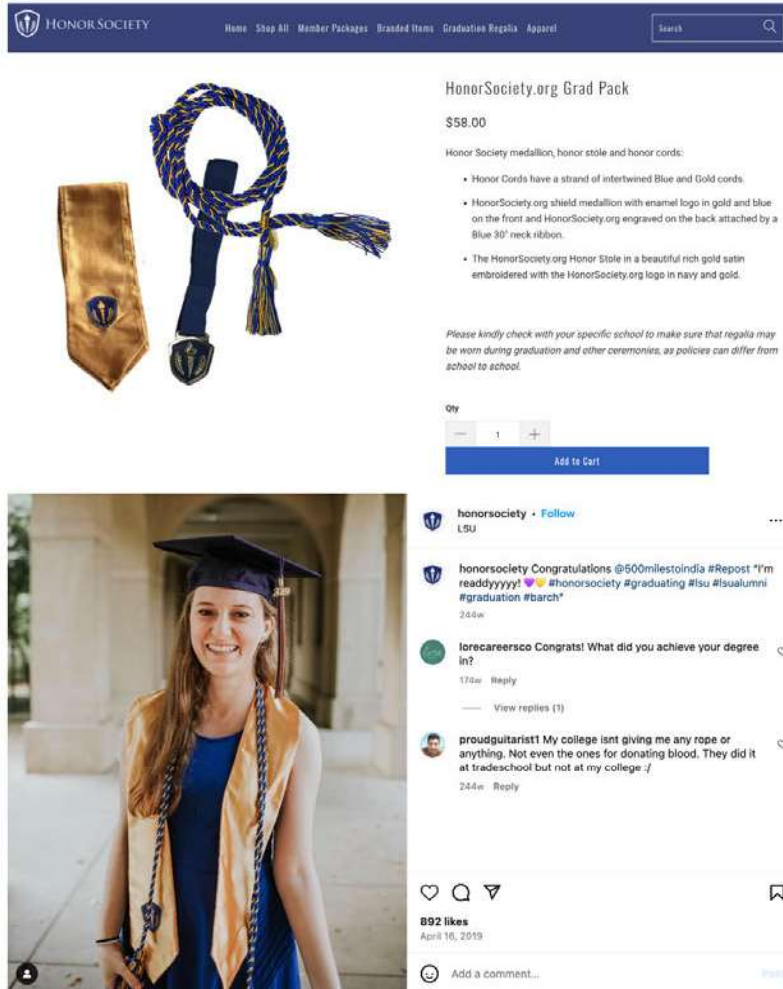
Continue

This survey utilized a test and control design. The only difference between the test and control cell was the stimuli shown for the Honor Society website and social media page.

Within the test cell, respondents saw (among other organizations’ websites and social media pages) a page from the Honor Society website from which people can order graduation regalia and a page from their social media showing a person wearing the regalia. Both images included the name “Honor Society”, the logo with the wreath, and the blue and gold colors of Honor Society.

Please review the following images as if you are planning to join or have been a member of this scholastic achievement society. Please take as long as you need to view the images. You will be able to proceed once you see the 'Continue' button, which will appear momentarily.

Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



Were you able to view the images clearly?

Yes

No


Continue

Within the control cell, consumers saw an altered website in which all instances of the word “Honor Society” were changed to “Merit Society”, the wreath emblems

were removed, and the blue and gold colors were changed to salmon pink and gray.

Please review the following images as if you are planning to join or have been a member of this scholastic achievement society. Please take as long as you need to view the images. You will be able to proceed once you see the 'Continue' button, which will appear momentarily.

Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



MeritSociety.org Grad Pack


\$58.00

Merit Society medallion, merit stole and merit cords:

- Merit cords have a strand of intertwined Pink and Gray cords.
- MeritSociety.org shield medallion with enamel logo in gray and pink on the front and MeritSociety.org engraved on the back attached by a Pink 30" neck ribbon.
- The MeritSociety.org Merit Stole is a beautiful rich gray satin embroidered with the MeritSociety.org logo in pink and gray.

Please kindly check with your specific school to make sure that regalia may be worn during graduation and other ceremonies, as policies can differ from school to school.

Qty: **Add to Cart**



meritsociety • Follow
LSU

meritsociety Congratulations @500milestodia #Repost "I'm readyyyyy!" 🎉 #meritsociety #graduating #lsu #lsualumni #graduation #barch*

lorecaresco Congrats! What did you achieve your degree in?

proudguitarist1 My college isnt giving me any rope or anything. Not even the ones for donating blood. They did it at tradeschool but not at my college :/

892 likes
April 16, 2019

Add a comment...

Were you able to view the images clearly?

Yes

No

Continue

All other content and stimuli were identical across the test and control cells.

Respondents were shown the images and were asked to review them as if they were planning to join or have been a member of this scholastic achievement society.

To ensure review of the images, a 5-second minimum wait was required before respondents were allowed to continue to the next screen of the survey. After that, respondents were asked a series of questions to assess confusion, beginning with whether they believed the scholastic achievement society shown in the images was owned and operated by the same scholastic achievement society shown in the first section of the survey or by a different scholastic achievement society. The order of the first and second answer choices was randomized.

Below is the same set of images as previously shown. Please answer the question at the bottom of the page.

If at any time you would like to see the images from the **first section** of the survey, please click on the yellow button.

[View images from first section](#)

The screenshot displays the HonorSociety.org website and a social media post. The website header includes the HonorSociety.org logo and navigation links: Home, Shop All, Member Packages, Branded Items, Graduation Regalia, and Apparel. A search bar is located on the right. The main content area features the 'HonorSociety.org Grad Pack' for \$58.00. It lists the items included: Honor Society medallion, honor stole, and honor cords. A list of details follows: Honor Cords have a strand of intertwined Blue and Gold cords; HonorSociety.org shield medallion with enamel logo in gold and blue on the front and HonorSociety.org engraved on the back attached by a Blue 30" neck ribbon; and The HonorSociety.org Honor Stole in a beautiful rich gold satin embroidered with the HonorSociety.org logo in navy and gold. A note advises checking with the specific school for regalia policies. Below the product information is a quantity selector (set to 1) and an 'Add to Cart' button. To the left of the product information is an image of the regalia items: a gold stole, a blue and gold cord, and a gold medallion. Below the website screenshot is a social media post from 'honorsociety - Follow' (LSU). The post shows a photo of a graduate wearing the regalia. The post text reads: 'honorsociety Congratulations @500milestoindia #Repost "I'm readyyyyyy! 🌈 #honorsociety #graduating #lsu #lsualumni #graduation #barch"'. It has 244w likes and 176w replies. The post also shows a comment from 'lorecareersco' congratulating the graduate and a comment from 'proudguarist1' expressing disappointment that the college is not giving them any rope or anything, even for donating blood.

Do you believe that the scholastic achievement society represented in the above images

☐ is owned and operated by the same scholastic achievement society that you were shown in the **first section** of the survey

☐ is owned and operated by a different scholastic achievement society than you were shown in the **first section** of the survey

☐ I do not know or have no opinion

☐ I was unable to view the image clearly


[Continue](#)

Consumers who indicated that they believe that the scholastic achievement society shown in the images is owned or operated by the same scholastic achievement society they were shown in the first section of the survey were then asked, “why do you say that?”

In the prior question, you said that you believe the scholastic achievement society represented in the images below is owned and operated by the same scholastic achievement society that you were shown in the first section of the survey.

Why do you say that?

[View images from first section](#)



HonorSociety.org Grad Pack

\$58.00


Honor Society medallion, honor stole and honor cords:

- Honor Cords have a strand of intertwined Blue and Gold cords.
- HonorSociety.org shield medallion with enamel logo in gold and blue on the front and HonorSociety.org engraved on the back attached by a Blue 30" neck ribbon.
- The HonorSociety.org Honor Stole in a beautiful rich gold satin embroidered with the HonorSociety.org logo in navy and gold.

Please kindly check with your specific school to make sure that regalia may be worn during graduation and other ceremonies, as policies can differ from school to school.

Qty:

[Add to Cart](#)



honorsociety - Follow
LSU

honorsociety Congratulations @500milestoindia #Repost "I'm readdyyyyy! 🎓 #honorsociety #graduating #lsu #lsualumni #graduation #barch"

244w

lorecaresce Congrats! What did you achieve your degree in?

174w Reply

View replies (1)

proudguitarist1 My college isnt giving me any rope or anything. Not even the ones for donating blood. They did it at tradeschool but not at my college :/

244w Reply

892 likes
April 16, 2019

Add a comment...

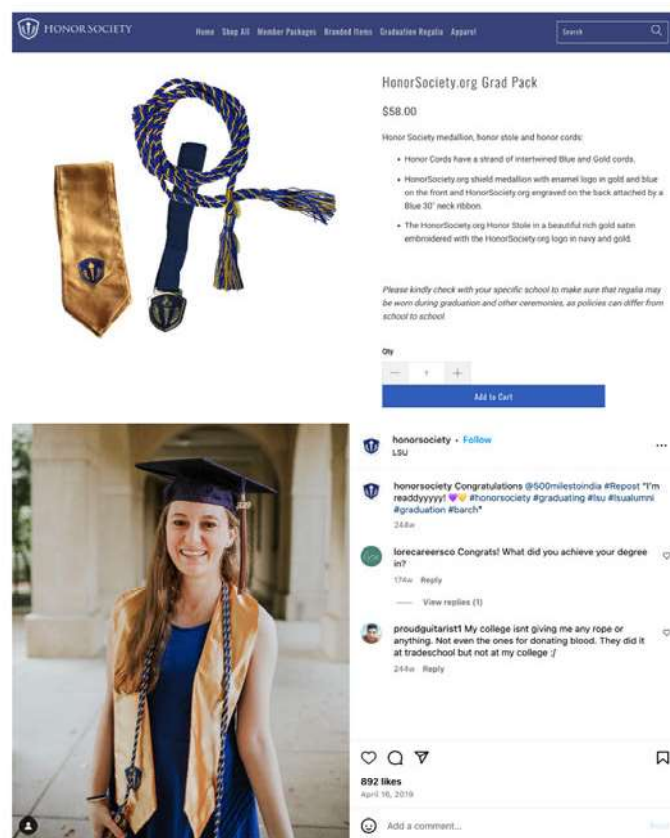
[Continue](#)

Next, respondents were asked to indicate whether they believe that the scholastic achievement society shown in the images is or is not sponsored or approved by the scholastic achievement society shown in the first section of the survey. The order of the first and second answer choices was randomized.

Below is the same set of images as previously shown. Please answer the question at the bottom of the page.

If at any time you would like to see the images from the **first section** of the survey, please click on the yellow button.

[View images from first section](#)



Do you believe that the scholastic achievement society represented in the above images

☐ **is sponsored or approved** by the scholastic achievement society that you were shown in the **first section** of the survey.

☐ **is not sponsored or approved** by the scholastic achievement society that you were shown in the **first section** of the survey.

☐ I do not know or have no opinion

☐ I was unable to view the image clearly

[Continue](#)

Respondents who indicated that they believe that the scholastic achievement society shown in the images is sponsored or approved by the same scholastic achievement society they were shown in the first section of the survey were then asked, “why do you say that?”

In the prior question, you said that you believe the scholastic achievement society represented in the images below is sponsored or approved by the scholastic achievement society that you were shown in the first section of the survey.

Why do you say that?

[View images from first section](#)

The screenshot displays the HonorSociety.org website and a social media post. The website header includes the HonorSociety.org logo and navigation links: Home, Shop All, Member Packages, Branded Items, Graduation Regalia, and Apparel. A search bar is located on the right. The main content area features the 'HonorSociety.org Grad Pack' for \$58.00. Below the title, it lists the items included: Honor Society medallion, honor stole, and honor cords. A list of details follows:

- Honor Cords have a strand of intertwined Blue and Gold cords.
- Honorsociety.org shield medallion with enamel logo in gold and blue on the front and HonorSociety.org engraved on the back attached by a Blue 30" neck ribbon.
- The HonorSociety.org Honor Stole in a beautiful rich gold satin embroidered with the HonorSociety.org logo in navy and gold.

 A note advises users to check with their specific school regarding regalia wear. A quantity selector and an 'Add to Cart' button are present. Below the website screenshot is a social media post from 'honorsociety - Follow' on LSU. The post includes a photo of a graduate wearing the regalia and text congratulating a user for their graduation. It shows 892 likes and a date of April 16, 2019.

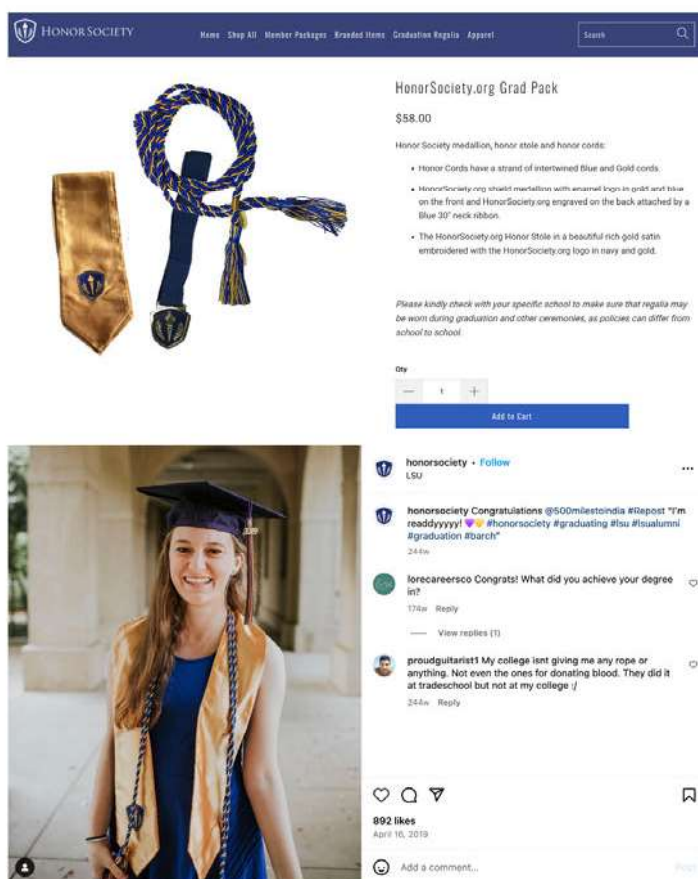
[Continue](#)

Next, respondents were asked to indicate whether they believe that the scholastic achievement society shown in the images has a business affiliation or connection with the scholastic achievement society they were shown in the first section of the survey. The order of the first and second answer choices was randomized.

Below is the same set of images as previously shown. Please answer the question at the bottom of the page.

If at any time you would like to see the images from the **first section** of the survey, please click on the yellow button.

[View images from first section](#)



Do you believe that scholastic achievement society represented in the above images:

☐ Has a business affiliation or connection with the scholastic achievement society that you were shown in the **first section** of the survey

☐ Does not have a business affiliation or connection with the scholastic achievement society that you were shown in the **first section** of the survey

☐ I do not know or have no opinion

☐ I was unable to view the image clearly

[Continue](#)

Respondents who indicated that the scholastic achievement society shown in the images does have a business affiliation or connection with the scholastic achievement society they were shown in the first section of the survey were then asked, “why do you say that?”

In the prior question, you said that you believe the scholastic achievement society represented in the images below has a business affiliation or connection with the scholastic achievement society that you were shown in the first section of the survey.

Why do you say that?

[View images from first section](#)

The screenshot displays the HonorSociety.org website and a social media post. The website header includes the HonorSociety.org logo and navigation links: Home, Shop All, Member Packages, Branded Items, Graduation Regalia, and Apparel. A search bar is located on the right. The main content area features a product titled "HonorSociety.org Grad Pack" priced at \$58.00. Below the title, a list of items is provided: Honor Cards, HonorSociety.org shield medallion, and The HonorSociety.org Honor Stole. A note advises users to check with their specific school regarding regalia use. A quantity selector and an "Add to Cart" button are also visible. To the left of the website content is a photograph of a female graduate wearing a blue cap and gown with a gold stole and a blue and gold braided cord. To the right of the website content is a social media post from the account "honorsociety - Follow LSU". The post includes a congratulatory message to a user, a question about degree achievement, and a comment about college regalia. The post has 892 likes and is dated April 16, 2019.

HonorSociety.org Grad Pack

\$58.00

Honor Society medallion, honor stole and honor cords:

- Honor Cards have a strand of intertwined Blue and Gold cords.
- HonorSociety.org shield medallion with enamel logo in gold and blue on the front and HonorSociety.org engraved on the back attached by a Blue 30" neck ribbon.
- The HonorSociety.org Honor Stole in a beautiful rich gold satin embroidered with the HonorSociety.org logo in navy and gold.

Please kindly check with your specific school to make sure that regalia may be worn during graduation and other ceremonies, as policies can differ from school to school.

Qty

— 1 +

Add to Cart

honorsociety - Follow
LSU

honorsociety Congratulations @500milestoindia #Repost "I'm readyyyyyy! 💖 #honorsociety #graduating #lsu #lsualumni #graduation #barch"

244w

lorecaresco Congrats! What did you achieve your degree in?

174w Reply

View replies (1)

proudguitarist1 My college isnt giving me any rope or anything. Not even the ones for donating blood. They did it at tradeschool but not at my college :/

244w Reply

892 likes
April 16, 2019

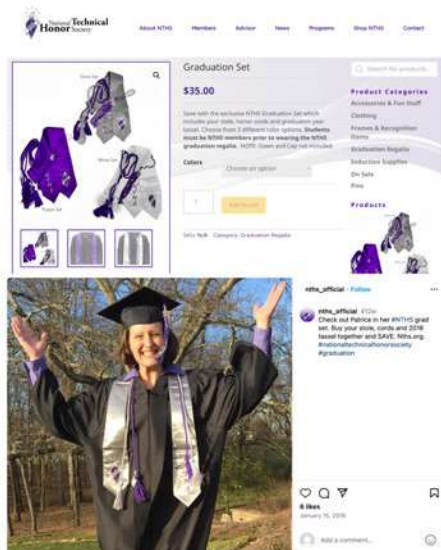
Add a comment...

Continue

All respondents, across both the test and control cells, saw the same set of questions for three other scholastic achievement societies, named The National Society of Leadership and Success, Alpha Sigma Lambda Honor Society, and National Technical Honor Society. Each of the four sets of images were shown in random order, such that the Honor Society images could be the first, second, third, or fourth image sets shown. Images of how the other three image sets appeared in the survey are included below and within Appendices C1 and D1.

Please review the following images as if you are planning to join or have been a member of this scholastic achievement society. Please take as long as you need to view the images. You will be able to proceed once you see the "Continue" button, which will appear momentarily.

Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



Were you able to view the images clearly?

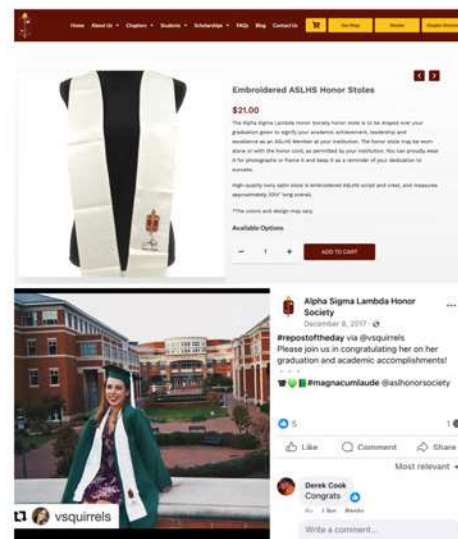
Yes

No

Continue

Please review the following images as if you are planning to join or have been a member of this scholastic achievement society. Please take as long as you need to view the images. You will be able to proceed once you see the "Continue" button, which will appear momentarily.

Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



Were you able to view the images clearly?

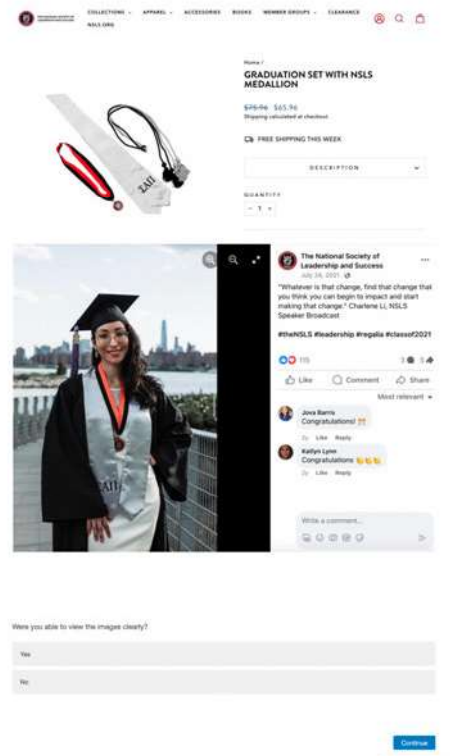
Yes

No

Continue

Please review the following images as if you are planning to join or have been a member of this scholastic achievement society. Please take as long as you need to view the images. You will be able to proceed once you see the "Continue" button, which will appear repeatedly.

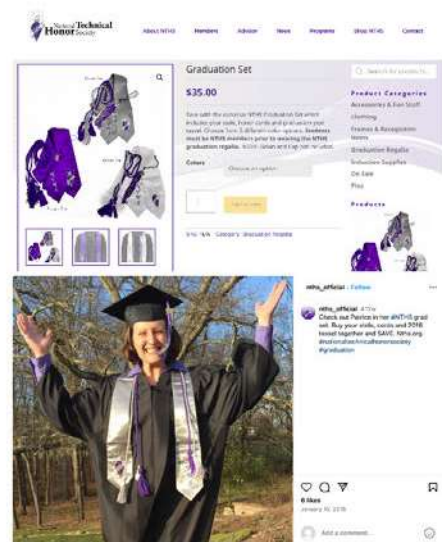
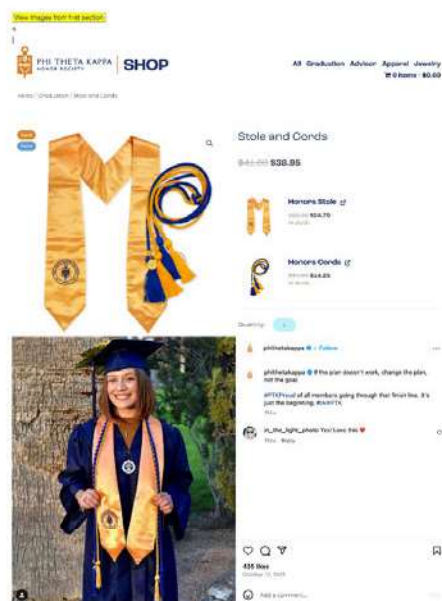
Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



On each of the question pages, there was a yellow button with the words "View images from first section" on it. The respondents were advised earlier in the survey that they could click on that button and view the images from the first section. If respondents chose to click on the yellow button, the images from the first section were displayed below it, and they could click on the "x" button to close those first section images. Below is an example of what the survey page looked like after the yellow button was clicked.

Below is the same set of images as previously shown. Please answer the question at the bottom of the page.

If at any time you would like to see the images from the first section of the survey, please click on the yellow button.



Do you believe that the scholastic achievement society represented in the above images

☐ is owned and operated by the same scholastic achievement society that you were shown in the first section of the survey

☐ is owned and operated by a different scholastic achievement society than you were shown in the first section of the survey

☐ I do not know or have no opinion

☐ I was unable to view the image clearly

Continue

Powered by Qualtrics

Full images of stimuli and screenshots are included in Appendices C1 and D1 to this report.

Sampling Plan

To ensure applicability of the research findings, rough quotas were set up in line with census distributions for geographical region. Census-based quotas were not used for age or gender, because the population who has been recently enrolled in 2-year colleges skews young and female. Our sample was 60% female, which is consistent with data showing that 59% of 2-year college students are female.¹⁴

Interviewing Period

Interviewing was conducted January 3rd, 2024 and January 4th, 2024.

Quality Control

Respondents in this survey were required to complete the standard set of quality control questions described earlier in this report.

The dataset was also reviewed in detail and “cleaned” prior to analysis. Data cleaning includes the removal of any respondents whose geographic coordinates or IP address were located outside of the United States, respondents who entered gibberish or nonsensical answers into open-ended responses, and respondents who took the survey in an inordinately short amount of time, among other considerations. For this survey, my analysis showed that the minimum amount of time in which a respondent could take the survey while fully examining the images and reading the questions was 3 minutes and 45 seconds (225 seconds). Therefore, survey responses were removed for any respondents who took the survey in less than 225 seconds. The full dataset is

¹⁴<https://www.statista.com/statistics/421305/percentage-of-students-in-community-colleges-by-gender/#:~:text=U.S.%20community%20colleges%3A%20share%20of%20for,credit%20students%202021%2C%20by%20gender&text=In%202021%2C%20around%2059%20percent,the%20United%20States%20were%20female.>

available in Appendix E1, and the responses excluded from analysis during data cleaning are included as a separate tab within the data file.

CONFUSION SURVEY RESULTS AND DISCUSSION

As more fully explained in the Experimental Design section, this survey consisted of showing an interested universe a sequential lineup of stimuli to compare confusion between Phi Theta Kappa's trade dress and Honor Society's trade dress, as demonstrated in their websites and regalia. The test group was shown images of Honor Society website and regalia. The control group was shown modified images with the name changed to "Merit Society", logo removed, and colors changed to salmon pink and gray. A total of 372 respondents took the survey,¹⁵ with 186 respondents in the test cell and 186 respondents in the control cell.

1. After viewing images from the website regalia store and social media of Phi Theta Kappa and Honor Society, a significant percentage of respondents were confused as to the relationship between the organizations.

As detailed in the Experimental Design section, respondents were randomly assigned to either the test or control cell and, in the third section of the survey, were shown images sets from four scholastic achievement societies in random order.

After indicating that they could clearly see the images, consumers were asked questions regarding the source, sponsorship, and affiliation between the scholastic achievement society shown on the current page and the scholastic achievement society that was shown in the first section of the survey (Phi Theta Kappa) for each image set.

¹⁵ Total usable N, after data cleaning.

Source Confusion

Of the consumers who saw the Honor Society website and social media page, 38.71% indicated they believed that Honor Society is owned or operated by Phi Theta Kappa.

As more thoroughly discussed in the Experimental Design section of my report, the “Merit Society” cell serves as a control. The purpose of a control cell is to account for “noise” within the data. Of the respondents who saw the Merit Society website and social media page, 20.43% indicated they believed that Merit Society is owned or operated by Phi Theta Kappa.

After controlling for noise, the net level of source confusion between Phi Theta Kappa and Honor Society is 18.28% (38.71%-20.43%).

Respondents who indicated a source relationship between Honor Society and Phi Theta Kappa were asked to provide a rationale (i.e., “Why do you say that?”). Below is a subset of these verbatim responses. In my review, a significant percentage of consumers made the connection as a result of the name “Honor Society”, the blue and gold colors, and the logo.

- “Because of the colors and the way they look”
- “The colors looked similar”
- “It’s the same name”
- “Same color scheme”
- “They both have the torch displayed”
- “Same colors and logo”
- “Similar colors”
- “They appear to look the same/similar thus possibly being made by the same company”

- "I say that because they both have the same design and theme"
- "The logo looks similar to the first image's logo"
- "They have the same colors and emblem"
- "Colors are the same as the first images I was shown"

All individual responses are available in electronic form in Appendix E1.

Sponsorship or Approval Confusion

Of the consumers who were shown Honor Society images, 43.01% believed that the scholastic achievement society shown in the images is sponsored or approved by the scholastic achievement society shown in the first section of the survey (Phi Theta Kappa).

Within the control cell, 24.19% believed that the scholastic achievement society shown is sponsored or approved by the scholastic achievement society shown in the first section of the survey (Phi Theta Kappa).

After controlling for noise, the net level of sponsorship or approval confusion between Phi Theta Kappa and Honor Society is 18.82% (43.01%-24.19%).

Respondents exhibiting confusion as to sponsorship or approval offered similar responses when asked to provide a rationale (*i.e.*, "Why do you say that?") as those indicating source confusion. Below is a subset of these verbatim responses. In my review, a significant percentage of consumers made the connection as a result of the name "Honor Society", the blue and gold colors, and the logo.

- "The items in the image look the same"
- "It has the same name"
- "Same colors and similar logo"

- “They look so similar”
- “Says honor society and shows the same logo”
- “They look very similar and seem to have the same logos on them”
- “It’s completely the same”
- “An Honor Society website, with a name as vague as that, most likely has connection with other Honor Societies”
- “Same colors, same design, same everything”
- “They have the same emblem just without the words”

All individual responses are available in electronic form in Appendix E1.

Affiliation or Connection Confusion

Of the consumers who saw the Honor Society images, 45.16% believed that the scholastic achievement society shown in the images has a business affiliation or connection with the scholastic achievement society shown in the first section of the survey (Phi Theta Kappa).

Within the control cell, 25.81% believed that the scholastic achievement society shown on the website has a business affiliation or connection with the scholastic achievement society shown in the first section of the survey (Phi Theta Kappa).

After controlling for noise, the net level of business affiliation or connection confusion between Phi Theta Kappa and Honor Society is 19.35% (45.16%-25.81%).

Respondents exhibiting confusion as to affiliation and connection offered similar responses when asked to provide a rationale (*i.e.*, “Why do you say that?”) as with the previous two types of confusion. Below is a subset of these verbatim responses. In my review, a significant percentage of consumers made the connection as a result of the name “Honor Society”, the blue and gold colors, and the logo.

- “They have the same colors”
- “They do look a lot a like so I would assume they are connected somehow”
- “Same names and image”
- “Looks same”
- “They look very similar and are advertised the same way”
- “I say that because they are both very similar”
- “All the imagery is close”
- “Design looks similar to each other”
- “The same color schemes and theme”
- “I feel like the Phi Theta Kappa Honor Society is connected to the Honor Society website since it is a specific honor society”
- “Both have the same name”
- “Same colors”

All individual responses are available in electronic form in Appendix E1.

Overall Confusion

In order to arrive at an overall level of confusion, I aggregated the responses. To qualify for the aggregated confusion metrics, respondents had to indicate that they believed there was source confusion, sponsorship/ approval confusion, or affiliation/connection confusion.

If a respondent indicated that they believed there were multiple types of confusion, they were only counted once.

When aggregating across source, sponsorship, and affiliation confusion, 64.52% of respondents in the test cell indicated at least one type of confusion. Within the control cell, 41.94% of respondents indicated at least one type of confusion. This creates a net

aggregate confusion of **22.58%** (64.52%-41.94%).¹⁶

The results are summarized in table form below.

	N	Source confusion	Sponsorship/ approval confusion	Business affiliation/ connection confusion	Aggregated confusion (deduped)
Test	186	38.71%	43.01%	45.16%	64.52%
Control	186	20.43%	24.19%	25.81%	41.94%
Net		18.28%	18.82%	19.35%	22.58%

VI. ADDITIONAL EVIDENCE OF CONSUMER CONFUSION

Plaintiff Phi Theta Kappa and Defendant Honor Society have each provided logs of member and prospective member complaints. These logs contain many comments demonstrating confusion between Honor Society and Phi Theta Kappa.

Plaintiff Phi Theta Kappa keeps records of member and potential member complaints and comments. I have been provided with and have reviewed a log of such comments in Document PTK0183497. As I note in Appendix H, there are many instances from this log in which members or prospective members appear to be confused about the relationship between Phi Theta Kappa and Honor Society. Some entries explicitly state “Joined HS.org thinking it was PTK.” Defendant Honor Society

¹⁶ Margin of error for a 95% confidence interval is +/- 6.9% for the test value and +/- 7.1% for the control value.

has also provided partial logs of membership cancellations, from which I have also noted several examples of confusion between Phi Theta Kappa and Honor Society.

Many of the substantive comments in Document HS_203039, Honor Society's internal membership cancellation logs, suggest confusion of Honor Society with other organizations. Search queries for specific terms shows that there are a total of [REDACTED]

[REDACTED] The high occurrence of these terms in consumer-provided comments support the likelihood of additional instances of confusion between Honor Society and Phi Theta Kappa.

VII. DETAILED ANALYSIS OF SECONDARY MEANING SURVEY RESULTS

OVERVIEW OF STUDY

In order to test for the existence of secondary meaning in Phi Theta Kappa's colors and logo, I showed respondents images of the regalia stole and rope that Phi Theta Kappa members wear at graduation. These images of Phi Theta Kappa's regalia contain the alleged trade dress colors and logo, and the name "Phi Theta Kappa" was digitally removed from the stole. After I showed respondents the images, I asked them whether they associate the displayed products with one scholastic achievement society, more than one scholastic achievement society, or no scholastic achievement society at all. The study included a separate control cell in which respondents were shown modified versions of the images with the alleged trade dress elements removed. The control cell respondents were shown images of the same stole and regalia that were digitally altered to change the color to black and to remove the logo, and they were then asked the same set of questions. This study design follows standard and generally

accepted statistical and consumer market survey methods for the assessment of secondary meaning in an alleged product trade dress.

For purposes of this study, the relevant universe was the same as that of the confusion survey. Respondents were filtered to only include adults (individuals 18 years of age or older) in the United States who have either attended a 2 year college during the last 5 years or plan to attend a 2 year college in the next 12 months, and who have already joined, have been interested in joining, or will be interested in joining an honor society or similar organization.

SUMMARY OF KEY FINDINGS

After viewing the Phi Theta Kappa regalia stole and rope, a significant percentage of respondents constituting current, past, and prospective consumers indicated that they believe that the items are associated with a single source (i.e. only one honor society). Many respondents specifically identified PTK as the source. Respondents' verbatim, written responses further indicated that the secondary meaning association was prompted specifically by the colors navy blue and gold and the logo.

SURVEY METHODOLOGY

The screenshots shown are reduced in size in order to fit on the pages of this report. Survey images appeared larger on respondents' screens, and respondents had the ability to increase the size of the text or images using the zoom-in feature on their browser. A full set of screenshots for this survey can be found in Appendix D2.

The Relevant Universe of Interest

The interested universe of this study was individuals who have been enrolled in a 2-year college at any point during the past 5 years or who intend to enroll in a 2-year college at some point during the next 12 months, and who have joined an honor society or have been or will be interested in joining an honor society.

Consumers were first asked about their age.

What is your age?

Under 18
18-24
25-35
36-45
46-55
56-65
66+
Prefer not to answer

Continue

Respondents who selected “Under 18” were terminated from (*i.e.*, not allowed to proceed further in) the survey.

Next, respondents were asked their gender. Options for “Female” and “Male” were randomized.

What is your gender?

Female

Male

Other

Prefer not to answer

Continue

Respondents were then asked in which state they currently reside and were provided with a drop-down menu of options.

In which state do you currently live?

Continue

Those selecting “I do not live in the United States” were terminated.

Respondents were then asked if they or anyone in their household work in certain industries. Options other than “None of the Above” were randomized.

Do you or does any member of your household work for any of the following types of industries?

Please select all that apply.

Health insurance

Honor society or similar organization

Manufacture or distribution of kitchen appliances

Personal training/physical therapy

None of the Above

Continue

Respondents were terminated if they selected “honor society or organization”.

Respondents were then asked whether they have been enrolled in a 2-year college at any point within the past 5 years. The order of the options “Yes” and “No” was randomized.

Have you been enrolled in a two-year college at any point during the last 60 months (5 years)?

No

Yes

Don't know/unsure

Continue

In the next screen, they were asked whether they intend to be enrolled in a 2-year college at some point in the next 12 months. As before, the order of the options “Yes” and “No” was randomized.

Do you plan to enroll in a two-year college at any point during the next 12 months?

Yes

No

Don't know/unsure

Continue

Respondents who did not answer “yes” to either of the above two questions were terminated.

If respondents answered “yes” to either of the above questions, they were asked if, while enrolled in a 2-year college, they had joined an honor society or had been or will be interested in joining an honor society. The first three options were randomized.

In a previous question, you mentioned that you have been enrolled in a 2-year college at some point during the last 5 years or plan to be enrolled in a 2-year college at some point during the next 12 months.

While enrolled in a 2-year college, have you been or will you be interested in joining an honor society?

No, I have not been and will not be interested in joining an honor society

Yes, I have already joined an honor society

Yes, I have been or will be interested in joining an honor society

Don't know/prefer not to say

Continue

Only respondents who selected either “Yes, I have already joined an honor society” or “Yes, I have been or will be interested in joining an honor society” were allowed to continue in the survey.

Experimental Design

After the initial screening/classification portion of the survey, respondents were told they had qualified to take the survey, shown instructions, and asked to verify their understanding/agreement of the instructions. Next, they were shown the images showing the regalia.

Respondents were first shown an introductory page with instructions, in which they were told to take as much time as they need to view each image and that they were

required to spend a minimum of 5 seconds viewing each image before progressing to the next screen. A copy of the entire survey's questionnaire is included in Appendix B2.

The following images are from a scholastic achievement society. Please review these images as if you were considering joining this achievement society.

Please take as much time as you need to view each image. After 5 seconds, you will have the option to move to the next page.

If for any question you do not know the answer, please type "don't know" or "not sure" in the answer box provided.



Respondents were then presented with the images one at a time and on separate pages, with the stole image presented first and the rope image presented second. On each page, respondents were instructed to use the zoom feature on their device if they would like to zoom in on the image and asked whether they could see the image clearly. Respondents who indicated that they could not view an image clearly were terminated. To ensure that respondents viewed each image for the minimum of 5 seconds, the blue forward arrow button did not appear until 5 seconds had elapsed.

An example of what each page looked like is shown below.

Use the zoom-in feature on the device you are using if you would like to enlarge the image.



Were you able to see the image clearly?

Yes

No



Below are pictures of the stimuli used in the test cell of the study.

Test Cell:

Stole



Rope



Using the test images as a template, I modified the appearance of the regalia for the control group images by changing the colors and removing the logo. Below are pictures of stimuli used as controls in the control cell:

Control Cell:

Stole



Rope



Respondents were randomly assigned to either the test cell or the control cell. Respondents in the test cell were shown the two test images, and respondents in the control cell were shown the two control images. Each respondent was shown two images total.

After viewing the images, respondents were asked whether they associated the regalia shown in the images with one scholastic achievement society, more than one scholastic achievement society, or no particular scholastic achievement society, with those three answer choices presented in randomized order. Respondents were also able to indicate that they had no opinion or did not know.

Below is the same set images that you just viewed. Please answer the question at the bottom of the page.



Do you associate the regalia shown in these images with one scholastic achievement society, more than one scholastic achievement society, or no particular scholastic achievement society?

No particular scholastic achievement society

One scholastic achievement society

More than one scholastic achievement society

Don't know or have no opinion



Respondents who selected “no particular scholastic achievement society” or “don’t know” were not asked any more questions. Respondents who answered “one scholastic achievement society” were asked which scholastic achievement society they associated with the images and given an open text box in which to type their response. Respondents who answered “more than one scholastic achievement society” were shown the same page as those who answered “one scholastic achievement society” except with the wording changed to plural “societies”, in order to correspond with their answer.

Below is the same set of images that you just viewed. Please answer the question at the bottom of the page.



Which scholastic achievement society do you associate with these images?



Respondents were then asked what in particular made them say that, with another open text box in which to type their answer.

What in particular makes you say that?



These images and screenshots were reduced in size in order to fit the pages of this report, and they appeared larger to respondents. Full images of stimuli and screenshots are included in Appendices C2 and D2 to this report.

Sampling Plans

A total of 865 qualified respondents participated in this survey. After successfully completing screening criteria and data quality control questions, respondents were randomly assigned to either the test cell or the control cell. A total of 428 participants were in the test cell, while a total of 437 participants were in the control cell.

This survey was fielded in two parts, which will be referred to as Group 1 and Group 2. For Group 1, the survey was fielded to consumers who were part of an online panel. For Group 2, the survey was fielded to individuals who had joined Phi Theta Kappa within the last 5 years. The two surveys were identical in all respects except the sampling plan.¹⁷

Group 1

The sample of panelists used in the survey was provided by Dynata, a leading supplier of online samples for surveys. Dynata is highly regarded as a reputable source of consumers for online surveys within the field of market research, and it utilizes appropriate industry procedures for ensuring the integrity and quality of its panels.

To ensure applicability of the research findings, rough quotas were set up in line

¹⁷ Our universe includes respondents who are both members of Phi Theta Kappa as well as those consumer who are interested in joining scholastic achievement societies. The analysis of both universes follows generally accepted principles for a secondary meaning survey. *See* Susan Schwartz McDonald, *Secondary Meaning Surveys*, Trademark and Deceptive Advertising Surveys, 79, 88-89 (Shari Seidman Diamond and Jerre B. Swann, 2nd ed. 2022) (finding the use of both current consumers and prospective consumers for a secondary meaning

with census distributions for geographical regions. Census-based quotas were not used for age or gender, because the population who has been enrolled in 2-year colleges skews young and female. Our sample was 63% female, which is consistent with data showing that 59% of 2-year college students are female.¹⁸

A total of 423 qualified respondents participated in Group 1. After successfully completing screening criteria and data quality control questions, respondents were randomly assigned to either the test or the control cell. A total of 210 participants were in the test cell, while a total of 213 participants were in the control cell.

Group 2

The sampling plan for Group 2 involved respondents who joined Phi Theta Kappa within the last 5 years. Phi Theta Kappa provided a list of the email addresses of members who had joined in the last 5 years, and emails were sent out to a random subset of those members.

The emails were sent from the Qualtrics platform and contained the same survey link as was sent out to the Group 1 respondents. The solicitation email, shown below, was sent out directly from Qualtrics and described the survey as being “about collegiate merchandise”. To avoid priming respondents, at no point did it disclose that the respondents were invited to respond based on their Phi Theta Kappa membership or their participation in honor societies generally. Respondents were compensated for their participation with a \$10 Amazon gift card, which is consistent with the survey-taking rewards given to online panel samples.

¹⁸<https://www.statista.com/statistics/421305/percentage-of-students-in-community-colleges-by-gender/#:~:text=U.S.%20community%20colleges%3A%20share%20of%20for,credit%20students%202021%2C%20by%20gender&text=In%202021%2C%20around%2059%20percent,the%20United%20States%20were%20female.>

Get a gift card for taking a survey about collegiate merchandise



Research Services <noreply@qemailserver.com>

To:

Please take this survey about collegiate merchandise. We would love to get your opinion.

The survey should take no more than 5 minutes, and upon completion you will get a \$10 Amazon gift card.

Follow this link to the Survey:

[Take the Survey](#)

Or copy and paste the URL below into your internet browser:

https://qualtricsxmg2rn3v6hk.qualtrics.com/jfe/preview/previewId/1c403299-b120-4b04-8140-6ebff900302f/SV_1Agwj3xSNyNRnHE?Q_CHL=preview

Follow the link to opt out of future emails:

[Click here to unsubscribe](#)

Respondents in Group 2 answered the same screening questionnaire as those in Group 1 and had the same qualification requirements. All respondents solicited for Group 2 passed the qualification questionnaire, which makes sense because the solicitation email was sent only to individuals who had attended a 2-year college and joined an honor society within the past 5 years.

Because Group 2 involved only individuals who had joined Phi Theta Kappa within the past 5 years, no age or gender quotas were used.

A total of 442 qualified respondents participated in Group 2. After successfully completing screening criteria and data quality control questions, respondents were randomly assigned to either the test or the control cell. A total of 218 participants were in the test cell, while a total of 224 participants were in the control cell.

Interviewing Period

Interviewing for Group 1 was conducted December 5, 2023-December 7, 2023.
Interviewing for Group 2 was conducted December 18, 2023-December 21, 2023.

Quality Control

Respondents in this survey were required to complete the standard set of quality control questions described earlier in this report.

The dataset was also reviewed in detail and “cleaned” prior to analysis. Data cleaning includes the removal of any respondents whose geographic coordinates or IP address were located outside of the United States, respondents who entered gibberish or nonsensical answers into open-ended responses, and respondents who took the survey in an inordinately short amount of time,¹⁹ among other considerations. A total of 3 respondents were removed from the dataset during data cleaning, all of which were removed due to entering gibberish or nonsensical verbatim answers. The full dataset is available in Appendix E2, and the responses excluded from analysis during data cleaning are included as a separate tab within the data file.

SECONDARY MEANING SURVEY RESULTS AND DISCUSSION

As more fully explained in the Experimental Design section, this survey consisted of showing an interested universe of respondents two images of honor society regalia. Respondents in the test cell were shown images of the Phi Theta Kappa regalia, with the words “Phi Theta Kappa” digitally removed. Respondents in the control cell

¹⁹ My analysis for this survey showed that the minimum amount of time in which a respondent could take the survey while fully examining the images and reading the questions was 1 minute 15 seconds (75 seconds). However, as the fastest respondent completed the survey in 76 seconds, no respondents were excluded from the dataset because of speeding.

were shown modified images with the entire logo removed and all of the colors changed to black.

1. *A significant majority of respondents associated the trade dress with only one scholastic achievement society.*

After viewing the images of the regalia, respondents were asked if they associated the regalia in the images with one scholastic achievement society, more than one scholastic achievement society, no particular scholastic achievement society, or if they didn't know/had no opinion.

Table 1 – Source Association, Group 1

Group 1	Test N = 210	Control N = 213	Net
One scholastic achievement society	40.95%	17.37%	23.58%
More than one scholastic achievement society	39.52%	42.25%	
No particular scholastic achievement society	14.29%	28.17%	
Don't know/no opinion	5.24%	12.21%	

Table 2 – Source Association, Group 2

Group 2	Test N = 218	Control N = 224	Net
One scholastic achievement society	57.34%	17.41%	39.93%
More than one scholastic achievement society	17.43%	20.54%	
No particular scholastic achievement society	17.89%	49.11%	
Don't know/no opinion	7.34%	12.95%	

Table 3 – Source Association, Both Group 1 & Group 2 combined

Groups 1 & 2 combined	Test N = 428	Control N = 437	Net
One scholastic achievement society	49.30%	17.39%	31.91%
More than one scholastic achievement society	28.27%	31.12%	
No particular scholastic achievement society	16.12%	38.90%	
Don't know/no opinion	6.31%	12.59%	

A total of 49.30% of the test group associated the images with one scholastic achievement society, compared to 17.39% in the control group, for a net association of 31.91% (49.30%-17.39%). Net association was somewhat higher among members of Phi Theta Kappa (39.93%), but, notably, substantial net association was still found among the broader online panel designed to incorporate prospective consumers (23.58%).

2. Many respondents specifically identified Phi Theta Kappa as the source of the trade dress elements.

In Group 1, which consisted of respondents with no known prior knowledge of Phi Theta Kappa, 4 respondents in the test cell (1.90%) and 0 respondents in the control cell specifically cited Phi Theta Kappa as the single source of the trade dress. In Group 2, for which the respondents were already Phi Theta Kappa members, 93 respondents in the test cell (42.66%) specifically identified Phi Theta Kappa in their verbatim answers, along with 11 respondents (4.91%) in the control cell.

3. Many respondents identified elements of the trade dress, such as logo and colors, as the reason for which they recognized the regalia.

After being asked which scholastic achievement society/societies they associated the regalia with, respondents were asked “What in particular makes you say that?”. Many respondents specifically identified the colors and logo as the reason for their association.

Below are examples of answers to this question (“What in particular makes you say that?”) from respondents in the test cell in Group 1 who selected one honor society.

- “The colors and ropes”
- “The gold and blue”
- “The colors and shaping”
- “Just the distinctive matching colors show it is one society”
- “The logo and color”
- “Gold and blue colors”
- “It’s the colors I think”
- “The certain colors and symbol”

Below are examples of answers to this question (“What in particular makes you say that?”) for respondents in the test cell in Group 1 who selected one honor society AND specified Phi Theta Kappa.

- “The simbol [sic] on the tie and the colors”
- “The embroited [sic] emblem I recognize it”
- “I recognize these items from the society’s store”
- “The look of the honor items”

Below are examples of answers to this question (“What in particular makes you say that?”) for respondents in the test cell in Group 2 who selected one honor society AND specified Phi Theta Kappa.

- “Colors”
- “The color scheme (goldish-orange and blue) and the emblem.”
- “The colors and images”

- “Yellow color”
- “The color”
- “Colors”
- “The logo and color”
- “The blue and gold colors”
- “Colors and logo”
- “The colors and emblem”
- “The colors and insignia look like the phi theta kappa regalia”
- “Those look like the regalia from Phi Theta Kappa’s kit”
- “Colors and image on stoll [sic]”
- “The gold and blue color scheme, as well as the logo on the first image looks similar to Phi Theta Kappa logo”
- “The gold and the symbol”
- “Color and symbol”

All individual responses are available in electronic form in Appendix E2.

VIII. DETAILED ANALYSIS OF FALSE ADVERTISING SURVEY RESULTS

OVERVIEW OF STUDY

In order to test for false advertising in Phi Theta Kappa’s promotional material, I showed respondents images of Honor Society webpages advertising their various qualifications, benefits, and accolades. Two cells of stimuli were used. The first cell showed respondents images from Defendant’s current website. The second cell showed respondents images from Defendants website prior to June 17, 2023. Respondents were

asked a series of questions regarding the message conveyed by the images, i.e. whether based on the image viewed they believed a particular statement to be true. If respondents responded affirmatively to interpreting a specific message from the stimuli, they were asked follow-up questions regarding the materiality of the images, i.e. whether their interest in Honor Society would increase or decrease if the statement were false. This study design follows standard and generally accepted statistical and consumer market survey methods for false advertising surveys.

The statements put to respondents are as follows:

- The referenced organization requires a minimum GPA to join as a member (Q103, Q203).
- The referenced organization has any academic requirement to join as a member (Q104, Q204).
- The referenced organization is considered a merit-based honor society by institutions of higher education (Q105, Q205).
- Members of the referenced organization are likely to receive better grades than non-members (Q106, Q206).
- Members of the referenced organization are more likely to be successful in their academic programs than non-members (Q107, Q207).
- Members of the referenced organization are more likely to stay in school and graduate on time than non-members (Q108, Q208).
- Members of the referenced organization are more likely to feel satisfied with their college experience than non-members (Q109, Q209).
- Members of the referenced organization are more marketable when job searching and applying to graduate school than non-members (Q110, Q210).
- Members of the referenced organization are more likely to develop valuable leadership and interpersonal skills than non-members (Q111, Q211).
- Members of the referenced organization are likely to connect better with collegiate peers, faculty, and staff members than non-members (Q112, Q212).

- The referenced organization has been ranked as one of the top honor societies in the United States by a qualified ranking organization (Q113, Q213).
- The referenced organization is the largest honor society in the United States (Q114, Q214).
- The referenced organization has active on-campus chapters that meet regularly (Q115, Q215).
- The referenced organization has campus chapters that are officially recognized by universities (Q116, Q216).
- The referenced organization is affiliated with physical campus chapters at multiple universities (Q117, Q217).
- The referenced organization is a non-profit entity (Q118, 218).
- The use of “honorsociety.org” as a domain name refers to a non-profit entity (Q119, Q219).
- The referenced organization is respected and held in high esteem by administrators, instructors and professors in higher education (Q120, Q220).
- Members of the referenced organization received 10% off Student Financial Aid preparation and advisory services from FAFSA.com (Q121, Q221).

SUMMARY OF KEY FINDINGS

When shown a series of statements asserting prestige and benefits of membership with Honor Society, a supermajority of respondents indicated that they would be far less interested in joining Honor Society if even one statement were false. The attributes respondents considered most important included: (1) that the organization is respected and held in high esteem by administrators, instructors, and professors in higher education; (2) that the Honor Society has campus chapters officially recognized by universities; and (3) that members of Honor Society gain certain benefits over non-members.

SURVEY METHODOLOGY

The screenshots shown are reduced in size in order to fit on the pages of this report. Survey images appeared larger on respondents' screens, and respondents had the ability to increase the size of the text or images using the zoom-in feature on their browser. A full set of screenshots for this survey can be found in Appendix D3.

The Relevant Universe of Interest

The interested universe of this study was individuals who have been enrolled in a 2-year college at any point during the past 5 years or who intend to enroll in a 2-year college at some point during the next 12 months, and who have joined an honor society or have been or will be interested in joining an honor society.

Consumers were first asked about their age.

What is your age?

<input type="radio"/> Under 18
<input type="radio"/> 18-24
<input type="radio"/> 25-35
<input type="radio"/> 36-45
<input type="radio"/> 46-55
<input type="radio"/> 56-65
<input type="radio"/> 66+
<input type="radio"/> Prefer not to answer

[Continue](#)

Respondents who selected “Under 18” were terminated from (*i.e.*, not allowed to proceed further in) the survey.

Next, respondents were asked their gender. Options for “Female” and “Male” were randomized.

What is your gender?

☐ Male

☐ Female

☐ Other

☐ Prefer not to answer

Continue

Respondents were then asked in which state they currently reside and were provided with a drop-down menu of options.

In which state do you currently live?

Continue

Those selecting “I do not live in the United States” were terminated.

Respondents were then asked if they or anyone in their household work in certain industries. Options were randomized.

Do you or does anyone in your household work in the following industries? Select all that apply.

☐ Manufacture or distribution of kitchen appliances

☐ Honor society or similar organization

☐ Personal training/physical therapy

☐ Health insurance

☐ None of the Above

Continue

Respondents were terminated if they selected “honor society or similar organization”.

Respondents were then asked whether they have been enrolled in a two-year college at any point within the last 60 months (5 years).

Have you been enrolled in a two-year college at any point during the last 60 months (5 years)?

- ☐ No
- ☐ Yes
- ☐ Don't know/unsure

Continue

In the next screen, they were asked whether they intend to be enrolled in a two-year college at some point in the next 12 months.

Do you plan to enroll in a two-year college at any point during the next 12 months?

- ☐ No
- ☐ Yes
- ☐ Don't know/unsure

Continue

If respondents did not answer “yes” to either of the above questions, they were terminated from the survey.

If respondents answered “yes” to either of the above questions, they were asked if while enrolled in a 2-year college, they had joined an honor society or had been or

will be interested in joining an honor society.

In a previous question, you mentioned that you have been enrolled in a 2-year college at some point during the last 5 years or plan to be enrolled in a 2-year college at some point during the next 12 months.

While enrolled in a 2-year college, have you been or will you be interested in joining an honor society?

- ☐ No, I have not been and will not be interested in joining an honor society
- ☐ Yes, I have been or will be interested in joining an honor society
- ☐ Yes, I have already joined an honor society
- ☐ Don't know/prefer not to say

Continue

Only respondents who selected either “Yes, I have already joined an honor society” or “Yes, I have been or will be interested in joining an honor society” were allowed to continue in the survey.

An additional screener question was implemented in determining the relevant universe of interest for the false advertising survey, as compared to the confusion and secondary meaning surveys.

Depending upon whether the respondent indicated they had joined an honor society or that they would be interested in joining an honor society, respondents were asked what resources they have reviewed or they would review in researching the honor society.

In a previous question, you mentioned that you have joined an honor society while enrolled in a 2-year college.

What resources have you referenced in connection with your membership in an honor society? Select all that apply

☐ Physical mail

☐ Email

☐ Online advertisement

☐ Social media

☐ Communication with representative of the local campus chapter of the honor society

☐ Physical advertisement

☐ The honor society's website

☐ Other

☐ I don't know

In a previous question, you mentioned that you have been or would be interested in joining an honor society while enrolled in a 2-year college.

What resources would you reference in researching an honor society? Select all that apply.

☐ Email

☐ Social media

☐ Online advertisement

☐ Physical advertisement

☐ Communication with representative of the local campus chapter of the honor society

☐ The honor society's website

☐ Physical mail

☐ Other

I established a quota that a minimum of 60% of respondents needed to indicate that they would review or had reviewed the honor society's website. In the final respondent pool, over 73% of respondents indicated that they would or had done so.

Other than the additional quota put above, the relevant universe was the same as that of the confusion and secondary meanings surveys. Respondents were filtered to only include adults (individuals 18 years of age or older) in the United States who have either attended a 2 year college during the last 5 years or plan to attend a 2 year college in the next 12 months, and who have joined, have been interested in joining, or will be interested in joining an honor society or similar organization.

Experimental Design - Message Portion

After the initial screening portion of the survey, respondents were shown one of two sets of images, depending on the cell to which they were randomly assigned.

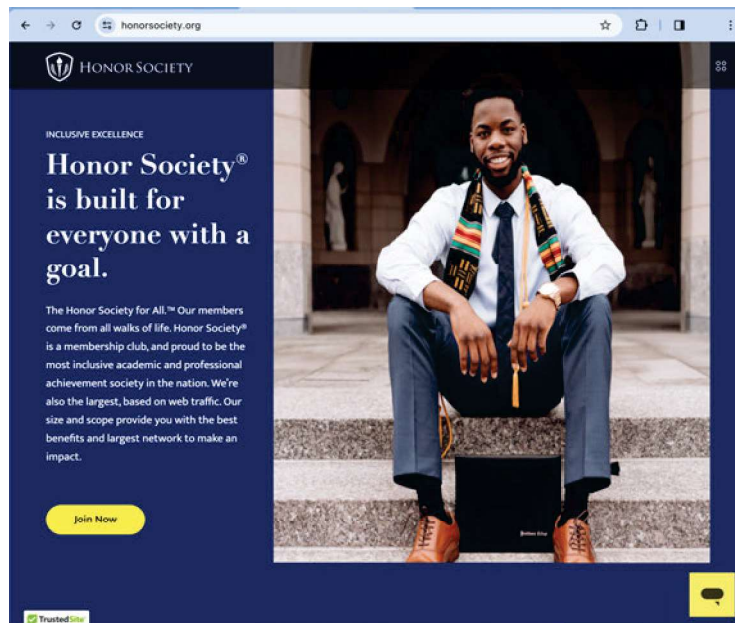
Please review the following images as if you are planning to join or have been a member of this organization and then answer the questions that follow. Please take as long as you need to view the images. You will be able to proceed once you see the "Continue" button.

You can review the previously displayed images by clicking the "View Images" button that will appear throughout the survey.

Please click "Continue" to see these images.

Continue

Respondents who were assigned to Cell 1, the “current” cell, were shown 8 images of the defendant's website and an email solicitation, including the defendant's updated home page,²⁰ defendant's ranking and alleged benefits as it appears on their homepage,²¹ their alleged campus chapters on their “Campus Chapters” webpage,²² their purported discount for FAFSA.com,²³ their email solicitation, and an FAQ page entitled “How Honor Society Puts Inclusion Over Exclusion: No GPA Requirements.”²⁴ The home page and other webpages were current as of the date the survey was fielded.



²⁰Honor Society, <https://www.honorsociety.org/>

²¹*Id.*

²²Honor Society, *Chapters*, <https://www.honorsociety.org/chapters>

²³Honor Society, *FAFSA.com - Student Financial Aid Services*, <https://www.honorsociety.org/benefits-coupons/fafsacom-student-financial-aid-services>

²⁴Honor Society Member Services, *How Honor Society Puts Inclusion Over Exclusion: No GPA Requirements*, <https://support.honorsociety.org/hc/en-us/articles/16483494621837-How-Honor-Society-Puts-Inclusion-Over-Exclusion-No-GPA-Requirements>

← → ↻ honorsociety.org ☆ 📄 📱 ⋮

Higher education loves Honor Society!

Honor Society was ranked as one of the top "Honor Societies You Should Join" by College Magazine and a worthwhile dues based organizations in a survey of our members.

Research indicates that there are numerous benefits to student involvement in organizations like Honor Society and reveals that students who are involved:

- Receive better grades
- Are more successful in their academic program
- Are more likely to stay in school and graduate on time
- Feel more satisfied with their college experience
- Are more marketable when job searching and applying to graduate school
- Develop valuable leadership and interpersonal skills
- Connect better with peers, faculty, and staff members

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Honor Society Cares™

Honor Society® is committed to ensuring that all potential members have access to the opportunities and resources they need to succeed. One of the ways we are fulfilling this commitment is through our Honor Society *Prothonotary* which provides and board special

← → ↻ honorsociety.org/chapters ☆ 📄 📱 ⋮

HONOR SOCIETY

Chapters

Honor Society Campus Chapters

Learn more about the innovative and inclusive Honor Society® approach to chapters.

Honor societies have traditionally had chapters at universities across the United States, providing in-person networking and community building opportunities for members. However, due to the COVID-19 pandemic, many universities have had to limit in-person gatherings and meetings. Additionally, HonorSociety.org recognized that having in-person chapters could create barriers to access and exclude students who may not have easy access to a physical chapter location.

To address these challenges and promote inclusion, HonorSociety.org made the decision to shift its traditional in-person chapters to online-only chapters. By doing so, members can continue to benefit from the resources and community-building opportunities of the organization, regardless of their physical location. Online-only chapters make it easier for members to connect and collaborate with one another, regardless of their geographic location, and allows the organization to be more inclusive of students who may not have access to a physical chapter location.

In addition to promoting inclusion, online-only chapters have also allowed HonorSociety.org to adapt to the changing needs of its members during the pandemic. By shifting to an online format, the organization can continue to provide valuable resources and opportunities for members to network, learn, and grow, despite the challenges of the pandemic.

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opportunities for members to network, learn, and grow, despite the challenges of the pandemic.


In conclusion, HonorSociety.org's decision to shift its traditional in-person chapters to online-only chapters was made to promote inclusion and adapt to the changing needs of its members during the pandemic. This decision has allowed the organization to continue to provide valuable resources and opportunities for members, regardless of their physical location, and has made it easier for members to connect and collaborate with one another.

Legacy Chapter Information:

The Honor Society campus chapter program helps build a vibrant academic community of high achievers on campuses across the United States. Our chapters represent a diverse cross-section of universities from private schools, to large state universities, to community colleges. Members lead important initiatives and spearhead elevated discussion, networking and events. Take a look at the campuses that have been founded and chartered below. The chapters below have been established and officially recognized by the universities below and may or may not be currently active. Check with your student affairs department or contact our chapter team for more information about specific chapters. Don't see your campus? Take the initiative to start a chapter, and join our founder's circle.

[Download our PDF](#) to learn more about Chapters and share with others. [For faculty advisors, please reference this document](#) to understand the value you can bring to our Campus Chapters.

Student - Honor Society Membership Acceptance Form



Dear student,

Congratulations! You are invited to join the *Honor Society*. Accepting this distinction connects you with like-minded high achievers from your region and across the nation, both in person and through our society's web portal.

Honor Society is the preeminent organization dedicated to recognition of academic and professional success. Our society empowers members to achieve through scholarship, recognition, exclusive privileges, job opportunities and much more. Honor Society recognizes your achievements to date, and builds a framework for future success.

Activate your membership now to become a member today!

Student:

Activate your Honor Society Membership

honorssociety.org/benefits-coupons/fafsa.com-student-financial-aid-services

HONOR SOCIETY

Mentorship Scholarships Discounts Careers Shop [Join Now](#) [Sign In](#)

FAFSA.com - Student Financial Aid Services

STUDENT FINANCIAL AID SERVICES INC.

10% off Student Financial Aid preparation and advisory.

Click Redeem Benefit and your code will be sent to you. Enter the code on FAFSA.com when checking out.

REDEEM BENEFIT

FAFSA.com - Student Financial Aid Services

FAFSA.com helps college students maximize their eligibility for financial aid.

Student Financial Aid Services, Inc. is a fee-based preparation and advisory company dedicated to helping America's families access the most federal and state financial aid possible to pursue their college dreams. Their website is www.fafsa.com.

Many people call Student Aid Advisors for personal advice because they want peace of mind that their form is accurate and their chances for aid are the best they can be.

They simplify filling out the government's complex aid application. They also review your FAFSA personally using our 450-point FAFSAcheck™ error detector.

Their two convenient options are FAFSALive™ and ExpressFAFSA™.

Hi, Need any help?

support.honorssociety.org/hc/en-us/articles/16483494621837-How-Honor-Society-Puts-Inclu...

HONOR SOCIETY Help Center

Search

[Back to website](#) [Submit a request](#) [Text / Call us](#) [Sign in](#)

How Honor Society Puts Inclusion Over Exclusion: No GPA Requirements

Honor Society® Member Services
June 06, 2023 18:52

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Tradition and precedent often dictate our societal norms. However, sometimes it becomes necessary to question these norms, especially when they perpetuate biases and create exclusionary environments. This is the case with honor societies and their long-standing reliance on GPA requirements. We at Honor Society® have chosen to challenge the current norm, putting inclusivity over exclusion and heralding a new era of recognition and empowerment.

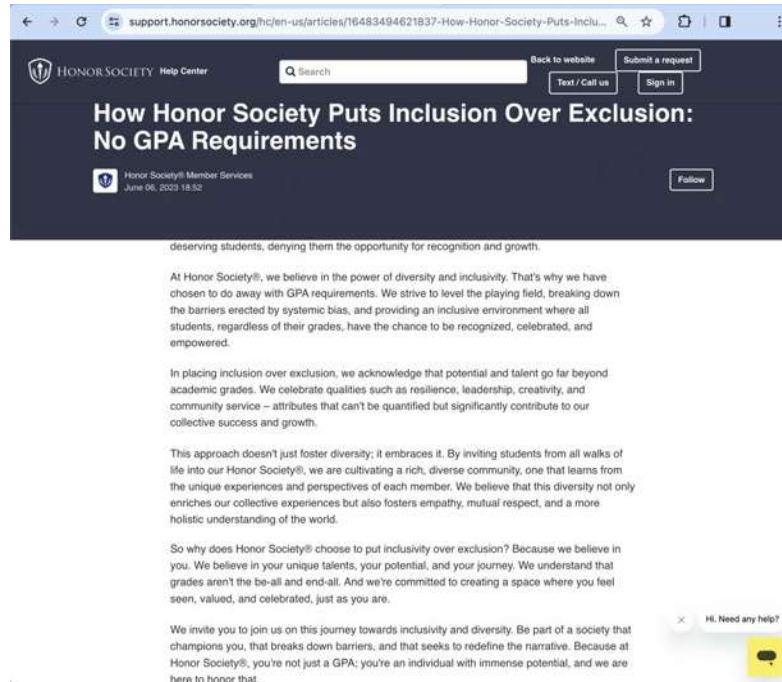
In the realm of academia, tradition has long dictated that honor societies are reserved for those who reach a certain grade point average. But if we delve deeper into the annals of history, we realize this was not always the case. In fact, from their inception in 1776 until the early 20th century - a span of over 125 years - honor societies had no GPA restrictions. At Honor Society, we're stepping back in time to redefine tradition, placing emphasis on inclusivity over exclusivity.

For too long, traditional honor societies have used GPA as a gatekeeper, determining who's allowed in and who's left out. While this may celebrate academic achievement, it often neglects to consider the diverse array of talents, skills, and unique qualities students possess. It also tends to overlook the systemic biases that can influence academic performance.

These biases, rooted in socio-economic disparities, language barriers, unequal educational opportunities, and personal hardships, often hinder students from meeting the stringent GPA requirements. By adhering strictly to these benchmarks, we risk excluding a vast array of deserving students, denying them the opportunity for recognition and growth.

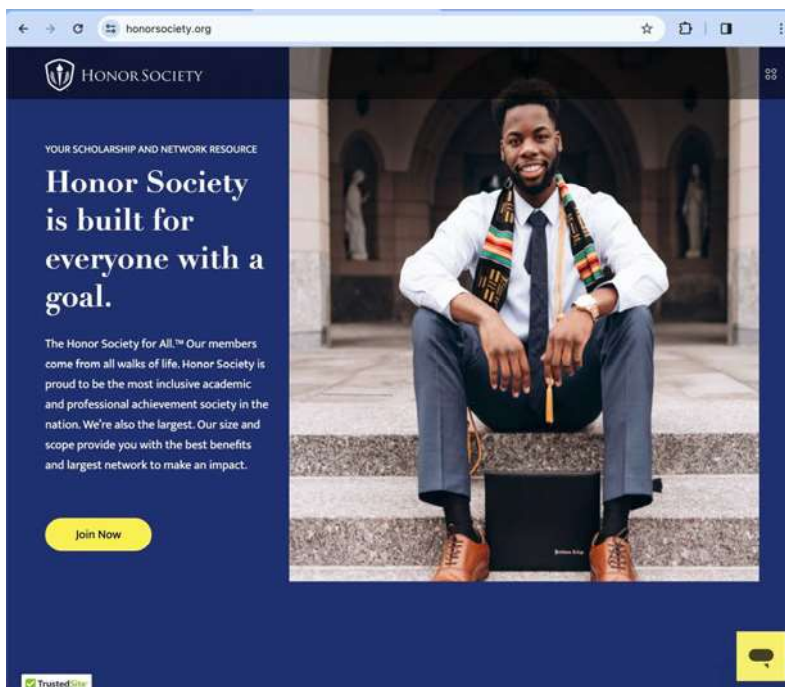
At Honor Society®, we believe in the power of diversity and inclusivity. That's why we have chosen to do away with GPA requirements. We strive to level the playing field, breaking down the barriers erected by systemic bias, and providing an inclusive environment where all students, regardless of their grades, have the chance to be recognized, celebrated, and

Hi, Need any help?



Respondents who were assigned to Cell 2, the “past” cell, were shown 8 images of the defendant's website and email solicitation, including the defendant's prior home page²⁵, defendant’s ranking and alleged benefits as it appears on their homepage, their alleged campus chapters on their “Campus Chapters” webpage, their purported discount for FAFSA.com, and their email solicitation. These images were similar to, and in some cases the same as, the images shown in Cell 1, but they depict variations in the Honor Society website that existed before July 2023.

²⁵Based on our research, defendant’s changed the homepage of their website after June 17, 2023. One of the changes was on their homepage from “We’re also the largest.” to “We’re also the largest, based on web traffic.” See Internet Archive, *honorsociety.org* (June 17, 2023), https://web.archive.org/web/20230801000000*/honorsociety.org.



honnorsociety.org

HONOR SOCIETY

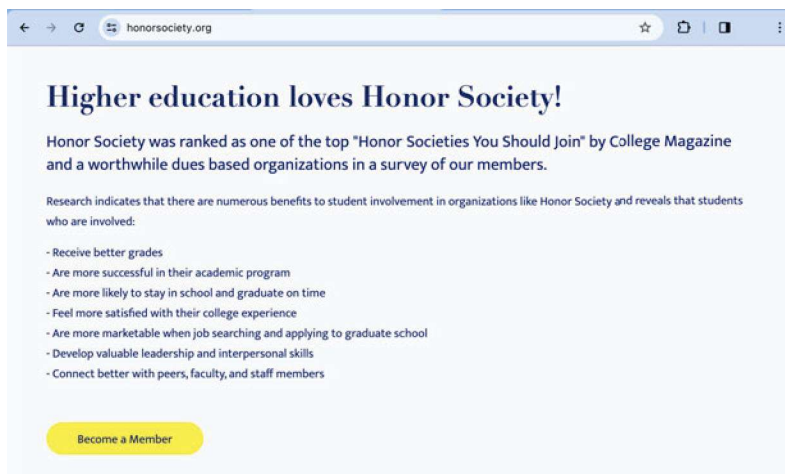
YOUR SCHOLARSHIP AND NETWORK RESOURCE

Honor Society is built for everyone with a goal.

The Honor Society for All.™ Our members come from all walks of life. Honor Society is proud to be the most inclusive academic and professional achievement society in the nation. We're also the largest. Our size and scope provide you with the best benefits and largest network to make an impact.

[Join Now](#)

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honnorsociety.org

Higher education loves Honor Society!

Honor Society was ranked as one of the top "Honor Societies You Should Join" by College Magazine and a worthwhile dues based organizations in a survey of our members.

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- Are more successful in their academic program
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- Feel more satisfied with their college experience
- Are more marketable when job searching and applying to graduate school
- Develop valuable leadership and interpersonal skills
- Connect better with peers, faculty, and staff members

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♥ Honor Society Cares™

Honor Society® is committed to ensuring that all potential members have access to the opportunities and resources they need to succeed. One of the ways we are fulfilling this commitment is through our Honor Society Cares program, which considers need-based financial

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HONOR SOCIETY

Chapters

Honor Society Campus Chapters

Learn more about the innovative and inclusive Honor Society® approach to chapters.

Honor societies have traditionally had chapters at universities across the United States, providing in-person networking and community building opportunities for members. However, due to the COVID-19 pandemic, many universities have had to limit in-person gatherings and meetings. Additionally, HonorSociety.org recognized that having in-person chapters could create barriers to access and exclude students who may not have easy access to a physical chapter location.

To address these challenges and promote inclusion, HonorSociety.org made the decision to shift its traditional in-person chapters to online-only chapters. By doing so, members can continue to benefit from the resources and community-building opportunities of the organization, regardless of their physical location. Online-only chapters make it easier for members to connect and collaborate with one another, regardless of their geographic location, and allows the organization to be more inclusive of students who may not have access to a physical chapter location.

In addition to promoting inclusion, online-only chapters have also allowed HonorSociety.org to adapt to the changing needs of its members during the pandemic. By shifting to an online format, the organization can continue to provide valuable resources and opportunities for members to network, learn, and grow, despite the challenges of the pandemic.

TrustedSite

honorssociety.org/chapters

opportunities for members to network, learn, and grow, despite the challenges of the pandemic.

In conclusion, HonorSociety.org's decision to shift its traditional in-person chapters to online-only chapters was made to promote inclusion and adapt to the changing needs of its members during the pandemic. This decision has allowed the organization to continue to provide valuable resources and opportunities for members, regardless of their physical location, and has made it easier for members to connect and collaborate with one another.


Legacy Chapter Information:

The Honor Society campus chapter program helps build a vibrant academic community of high achievers on campuses across the United States. Our chapters represent a diverse cross-section of universities from private schools, to large state universities, to community colleges. Members lead important initiatives and spearhead elevated discussion, networking and events. Take a look at the campuses that have been founded and chartered below. The chapters below have been established and officially recognized by the universities below and may or may not be currently active. Check with your student affairs department or contact our chapter team for more information about specific chapters. Don't see your campus? Take the initiative to start a chapter, and join our founder's circle.

[Download our PDF](#) to learn more about Chapters and share with others. [For faculty advisors, please reference this document](#) to understand the value you can bring to our Campus Chapters.

HonorSociety.org Chapters

This map was made with Google My Maps. Create your own.



TrustedSite

Student - Honor Society Membership Acceptance Form



Dear student,

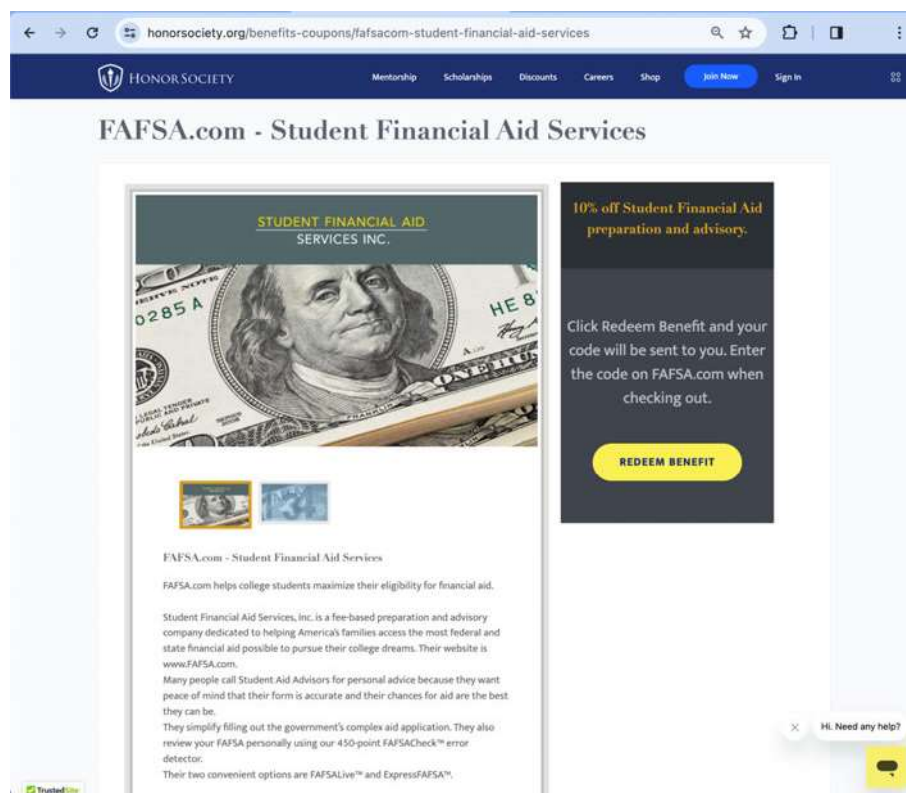
Congratulations! You are invited to join the *Honor Society*. Accepting this distinction connects you with like-minded high achievers from your region and across the nation, both in person and through our society's web portal.

Honor Society is the preeminent organization dedicated to recognition of academic and professional success. Our society empowers members to achieve through scholarship, recognition, exclusive privileges, job opportunities and much more. Honor Society recognizes your achievements to date, and builds a framework for future success.

Activate your membership now to become a member today!

Student:

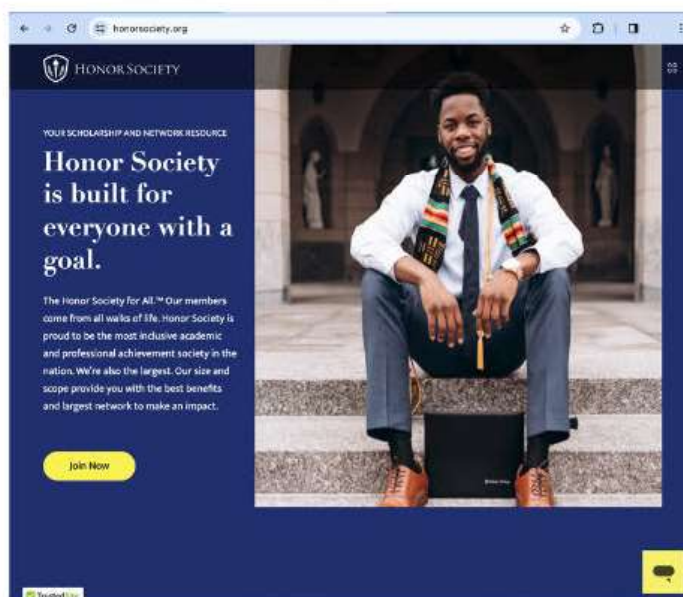
Activate your Honor Society Membership



After viewing each image, respondents were asked whether they were able to view the image clearly. Respondents who indicated that they could not view the images clearly were terminated.

Please review the following image as if you are planning to join or have been a member of this organization and then answer the question that follows. Please take as long as you need to view the image. You will be able to proceed once you see the "Continue" button.

Use the zoom-in feature on the device you are using if you would like to enlarge any of the images.



Are you able to view the image clearly?

☐ Yes

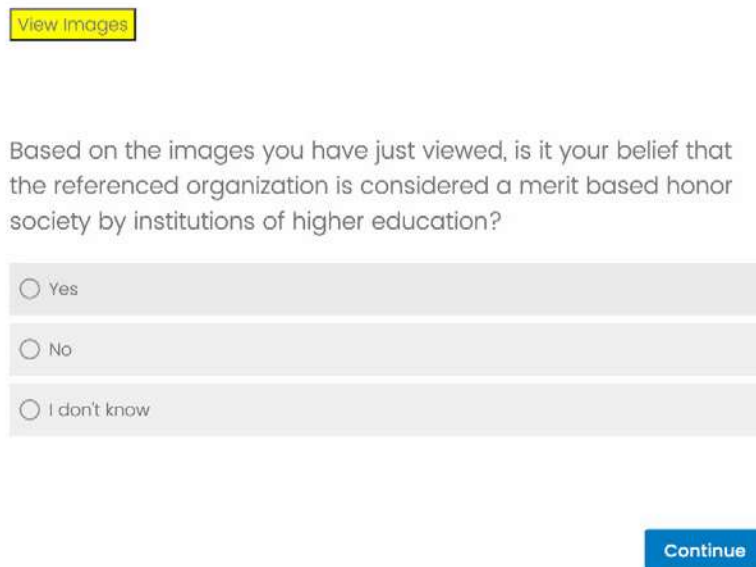
☐ No

Continue

Respondents were informed that they may review the set of images they have previously viewed by clicking the "View Images" button at any point during the survey. The yellow "View images" button appeared at the top left of each subsequent question. If the respondent chose to click on it, the set of images was displayed below the button, as shown in the following screenshot.



Next, respondents were asked one of the several message questions. Every respondent was shown every question, and questions were displayed to respondents one at a time in a randomized order. In the example screenshot below, respondents were asked if it was their belief the referenced organization is considered a merit based honor society by institutions of higher education. For every question, respondents had the option to indicate “Yes”, “No” or “I don’t know,” and the order of the answer options “Yes” and “No” were randomized.



View Images

Based on the images you have just viewed, is it your belief that the referenced organization is considered a merit based honor society by institutions of higher education?

☐ Yes

☐ No

☐ I don't know

Continue

The same format was used throughout the message portion of the survey to gauge whether the relevant consumer believed the stimuli supported each stated claim. A copy of the entire survey’s questionnaire is included in Appendix B3.

As quality controls, two additional questions were included which asked the respondents if the advertisements purported to convey the message that the organization offers pro bono legal services or if members of the organization receive a free Netflix subscription. The purpose of these control questions was to ask about something that was clearly not indicated by the stimuli (none of the stimuli reference

Netflix or pro bono legal services in any way). Therefore, all respondents who are paying attention to the images and questions will accurately answer “No”. Respondents who answered “Yes” to either of the above control questions were terminated from the survey.²⁶ Because the questions were shown in randomized order, the control questions could appear at any point during the series of message questions.

Experimental Design - Materiality Portion

For each question within the Message portion of the survey (except for the control statements), there are related pairs of Materiality questions. After having completed all Message questions, respondents were shown the Materiality questions. Each respondent was only shown the Materiality questions that correspond to the Message questions for which they had previously answered “Yes”. For any Message question for which they had answered “No” or “I don’t know”, respondents were not asked the corresponding Materiality questions.

For example, respondents who indicated that the organization referenced in the images above does require a minimum GPA to join as a member in the Message portion were asked whether their decision of whether or not to join the organization would be influenced if the organization did not require a minimum GPA. As before, respondents had the option to indicate “Yes”, “No” or “I don’t know,” and the answer choices “Yes” and “No” were randomized.

²⁶ The use of control statements (also known as internal controls) is a generally accepted control in a false advertising survey. See E. Deborah Jay, *Ten Truths of False Advertising Surveys*, 103 Trademark Rep. 1116, 1143-45 (2013).

[View Images](#)

If you were to learn that the organization referenced in the images above is not considered a merit based honor society by institutions of higher education, would it influence your decision of whether or not to join the organization?

☐ Yes

☐ No

☐ I don't know

Continue

If the respondent indicated “Yes,” they were asked whether it would increase, decrease or have no effect on their interest in joining the organization.

[View Images](#)

In a previous question you indicated that upon learning that the organization referenced in the images above is not considered a merit based honor society by institutions of higher education, that factor would influence your decision to join the organization. Would it increase, decrease, or have no effect on your interest in joining this organization?

☐ It would increase my interest in joining this organization.

☐ It would decrease my interest in joining this organization.

☐ My interest in joining this organization would be the same

☐ I don't know

Continue

The same format was used throughout the Materiality portion of the survey to gauge whether, were each claim to be false, it would have a material impact upon the relevant consumer's decision to join the honor society. Full images of stimuli and screenshots are included in Appendices C3 and D3 to this report.

Sampling Plan

A total of 213 qualified respondents participated in this survey. After successfully completing screening criteria and data quality control questions, respondents were randomly assigned to one of two cells, which I internally labeled “current” and “past”. A total of 102 participants were in the “current” cell, while a total of 111 participants were in the “past” cell. Participants were not told which cell to which they had been assigned, and the only difference between the two cells was the version of the stimuli used. The “current” cell used images from the Honor Society website as it appeared at the time of data collection in January 2024, and the “past” cell used the equivalent images from the website as they appeared before July 2023.

Interviewing Period

Interviewing was conducted from January 11, 2024 to January 14, 2024.

Quality Control

Respondents in this survey were required to complete the standard set of quality control questions described earlier in this report.

The dataset was also reviewed in detail and “cleaned” prior to analysis. Data cleaning includes the removal of any respondents whose geographic coordinates or IP address were located outside of the United States and respondents who took the survey

in an inordinately short amount of time, among other considerations. For this survey, my analysis showed that the minimum amount of time in which a respondent could take the survey while fully examining the images and reading the questions was 6 minutes and 30 seconds (390 seconds). Therefore, survey responses were removed for any respondents who took the survey in less than 390 seconds. The full dataset is available in Appendix E3, and the responses excluded from analysis during data cleaning are included as a separate tab within the data file.

FALSE ADVERTISING SURVEY RESULTS AND DISCUSSION

As more fully explained in the Experimental Design section, this survey consisted of showing the relevant universe images from Honor Society's website containing various claims about the organization and benefits of membership. Respondents were then asked about the message (whether they believed each stated claim based upon their review of the stimuli) and materiality (whether the falsity of each stated claim affected their interest in Honor Society) as relating to their perception of each claim.

1. *An overwhelming supermajority of respondents indicated that if 1 or more of the statements were false, that it would materially decrease their interest*

81.22% of respondents indicated that if 1 or more of the statements on Honor Society's website were false, that it would materially decrease their interest in joining the organization. Of the statements, consumers indicated that if the following statements were false, they would materially decrease their interest in joining the organization:

- a. "Higher Education Loves Honor Society"
- b. Honor Society's advertisement of campus chapters that are officially recognized by universities

- c. Members of Honor Society are more likely to develop valuable leadership and interpersonal skills
 - d. Members of Honor Society are more likely to feel satisfied with their college experience than non members
 - e. Members of Honor Society are more likely to stay in school and graduate on time than non-members
 - f. Members of Honor Society are more likely to be more successful in in their academic programs
2. *A substantial number of respondents indicated that Honor Society's website indicated they are considered a merit-based honor society by institutions of higher education, and that such representation would have a material impact on their decision to join the organization.*

In total, **76.88%** of respondents indicated that Honor Society's website represented that they are considered a merit-based honor society by institutions of higher education. This is likely attributable to Honor Society's name and overall branding. Additionally, **26.88%** of respondents in both cells indicated that, if Honor Society is not considered a merit-based honor society by institutions of higher education, then it would materially decrease their interest in joining the organization.

3. *A substantial number of respondents indicated that Honor Society's website indicated they are respected and held in high esteem by administrator, instructors and professors in higher education, and that such representation would have a material impact on their decision to join the organization.*

In total, **89.38%** of the total respondents indicated that Honor Society's website represented that they are respected and held in high esteem by administrators, instructors and professors in higher education. This is likely attributable to Honor

Society's advertisement on their homepage that "Higher Education Loves Honor Society."

Additionally, **43.19%** of respondents in both cells indicated that, if Honor Society is not respected and not held in high esteem by administrators, instructors and professors in higher education, then it would materially decrease their interest in joining the organization.

4. A substantial number of respondents indicated that Honor Society's advertisement of campus chapters officially recognized by universities would have a material impact on their decision to join the organization.

In total, **88.13%** of the total respondents indicated that Honor Society's website conveyed the message that they have campus chapters that are officially recognized by universities.

Subsequently, in the related follow up questions, **26.76%** of respondents indicated that if they did not have campus chapters that are officially recognized by universities, that it would materially decrease their interest in joining the organization.

5. A significant number of respondents indicated that Honor Society's advertisement of several benefits for members would have a material impact on their decision to join the organization.

Honor Society advertises several benefits on their homepage alleging that members receive better grades, are more successful in their academic program, are more likely to stay in school and graduate on time, feel more satisfied with their college experience, are more marketable when job searching and applying to graduate school, develop valuable leadership and interpersonal skills, and connect better with peers, faculty, and staff members as compared to non-members.

Indeed, respondents indicated that these statements conveyed the message that members do in fact receive these benefits. Respondents found these messages were not only conveyed by the statements, but they would have a material impact on their decision of whether or not to join the organization:

a. Better grades

75.63% of total respondents indicated that Honor Society statement's conveyed the message that their members receive better grades than non-members. 24.88% of total respondents indicated that if members did not receive better grades than non-members, that it would materially decrease their interest in joining the organization.

b. Likelihood of academic success

87.50% of total respondents indicated that Honor Society statement's conveyed the message that their member's are more likely to be successful in their academic programs than non-members. 34.27% of total respondents indicated that if members are not more likely to be more successful in their academic programs than non-members, that it would materially decrease their interest in joining the organization.

c. Likelihood to graduate on time

88.75% of total respondents indicated that Honor Society statement's conveyed the message that their members are more likely to stay in school and graduate on time than non-members. 32.86% of total respondents indicated that if members are not more likely to stay in school and graduate on time than non-members,, that it would materially decrease their interest in joining the organization.

d. Likelihood of satisfaction

88.13% of total respondents indicated that Honor Society statement's conveyed the message that their members are more likely to feel satisfied with their college experience than non-members. 30.99% of total respondents indicated that if members are not more likely to feel satisfied with their college experience than non-members, that it would materially decrease their interest in joining the organization.

e. Job and graduate school marketability

90.00% of total respondents indicated that Honor Society statement's conveyed the message that their members are more marketable when job searching and applying to graduate school than non-members. 30.99% of total respondents indicated that if members are not more marketable when job searching and applying to graduate school than non-members, that it would materially decrease their interest in joining the organization.

f. Likelihood of developing leadership and interpersonal skills

88.75% of total respondents indicated that Honor Society statement's conveyed the message that their members are more likely to develop valuable leadership and interpersonal skills than non-members; 36.15% of total respondents indicated that if members are not more likely to develop valuable leadership and interpersonal skills than non-members, that it would materially decrease their interest in joining the organization.

g. Likelihood of connecting with peers, faculty, and staff

81.88% of total respondents indicated that Honor Society statement's conveyed the message that their members are likely to connect better with collegiate peers, faculty,

and staff members than non-members. **21.60%** of total respondents indicated that if members are not more likely to connect better with collegiate peers, faculty and staff members than non-members, that it would materially decrease their interest in joining the organization.

On average, **29.63%** indicated that if the aforementioned statements concerning membership benefits were false, that it would materially decrease their interest in joining the organization.

6. *On average, a significant number of respondents indicated that Honor Society's statements would have a material impact on their decision to join the organization.*

Across all statements on Honor Society's website, respondents indicated that their interest in joining the organization would decrease by **23.47%** if these statements were, indeed, false. This average treats each statement with equal weight; if certain statements that were clearly less important to respondents, such as a claim that Honor Society is the "largest honor society in the United States" (a decrease of only 5.0% interest), an average which weighted or excluded less material statements would be even higher.

IX. ADDITIONAL EVIDENCE OF FALSE ADVERTISING

The membership cancellation logs provided by Honor Society in documents HS_203029 and HS_136621 further contain evidence of dissatisfaction and allegations of false advertising. HS_203039 contains [REDACTED] entries, collected from June 2, 2017,

through February 6, 2018.²⁷ Many substantive comments in HS_203039 suggest the following potential reasons for discontinuing membership, with more substantial comments often incorporating multiple reasons.²⁸ Specific examples of comments in these categories can be found in the Addendum to this section located in Appendix H to this Report.

- As previously observed in Section VI, *supra* pp. 44-45, the student misunderstood which organization they had signed up with, or mistook the organization for their school's honors society.

- [REDACTED]

²⁷ Although there are 15,204 entries, many membership cancellation requests were not accompanied by explanation. Approximately 2,112 entries are blank, 1,264 entries state “no reason” or variants, and 1,031 entries contain “n/a” or variants.

²⁸ The common reasons for requesting cancellation membership are listed based on my qualitative review of the comments. Keyword counts are provided as rough, overview illustrations of the frequency these reasons appeared in the data to support my qualitative observations.

²⁹ The search term “affiliat” was used in order to encompass both “affiliate” and “affiliation”.

[REDACTED]

Additionally, Mikal Clavert, Chief Marketing officer of Honor Society, testified that Honor Society regularly markets to children as young as 13 years old, and there is no requirement that a person even be enrolled in any school or academic program to join its membership.³⁰

On the whole, there are many indications in the Honor Society internal document HS_203039 suggesting that Honor Society may be materially misrepresenting a number of things which the relevant universe of consumers would materially rely upon. Deposition Exhibit 48 contains an advertisement which had been displayed on the Honor Society website, claiming *inter alia* that members receive better grades, are more marketable when job searching and applying to graduate school, and connect better with peers, faculty, and staff members. After reviewing the students' comments in document HS_203039, it does not seem that their experience has aligned with the advertised benefits. Indeed, the same advertisement touts "Higher education loves Honor Society!" and that "Honor Society was ranked as one of the top 'Honor Societies You Should Join'" by College Magazine, the article of which is included as Deposition Exhibit 49, and appears to have been freelance written by a college student with no qualifications, Deposition Exhibit 50. Further, Deposition Exhibit 48 contains an advertisement that Honor Society was ranked "a worthwhile dues based organizations

³⁰ Calvert Dep. Tr. at 244:21-245:17, 276:19-277:11, 325:1-5.

[sic] in a survey of our members.” But again, HS_203039 does not seem to align with this statement.

Although consumer complaints are not uncommon in consumer-facing business, the preponderance and nature of complaints implicate Honor Society as misrepresenting: (1) affiliation or approval from colleges where it had none; (2) the reoccurring charging of membership fees; and (3) the purported benefits of membership. Furthermore, there are complaints which suggest that Honor Society may not maintain particular academic standards for admitting member students, nor indeed take efforts to avoid advertising to and admitting members who are not even attending a college. Finally, on its face, the the name “Honor Society” connotes that the organization is in fact an organization that would recognize established and measured academic success; that it does not require academic success to join its membership renders the organization’s name misleading.

X. CONCLUSION

Based on the surveys conducted and described in this report, it is clear that relevant consumers are clearly influenced by Honor Society’s promotional and trademark strategies to confuse the organization with Phi Theta Kappa.

After reviewing website and regalia stimuli, a net aggregate of 22.58% of respondents reported confusion between Phi Theta Kappa and Honor Society. This exceeds most standards set by courts to indicate a likelihood of confusion.³¹ A

³¹ *McCarthy on Trademarks and Unfair Competition* § 32:326-327 (5th ed.) “Generally, figures in the range of 25 percent to 50 percent have been viewed as solid support for a finding of likelihood of confusion. The Ninth Circuit has said that a survey showing a 27.7% level of confusion is alone sufficient evidence to prevent a summary judgment that there is no likelihood of confusion....the Second Court found that a 15-20 percent rate corroborates a finding of likely confusion.”

likelihood of confusion finding would be consistent with the evidence suggesting actual confusion summarized in pp. 46-47 of this report.

PTK's alleged trade dress, i.e. its navy and gold color scheme, combined with its wreath of leaves logo, was tested in a survey for single-source identification significance. The survey was administered to two different groups. Group 1 was a cohort fielded from an online panel provider, and Group 2 was a random subset of individuals on a mailing list of PTK members who had joined in the previous 5 years. For Group 1, in the test cell, 40.95% of respondents indicated that PTK's trade dress was associated with a single source. For Group 2, in the test cell, 57.34% of respondents indicated that PTK's trade dress was associated with a single source. Several respondents in both cohorts identified that source as PTK. After controlling for noise, and taking into account respondents in the control cells, we found a net secondary meaning of 23.58% and 39.93% per each group, respectively. When viewed in context, it is my opinion that PTK has established substantial source identification significance in its asserted trade dress.

After reviewing Honor Society webpages advertising various statements about the organization and benefits of membership, 81.22% of respondents indicated a decrease in interest in the organization if any one of the statements surveyed were false. The unweighted average of the rate of respondents indicating a decrease in interest per each statement is 23.47%. Although this survey does not address the truth value of the statements surveyed, it does indicate that their veracity is highly material to relevant consumers and their interest in the organization. Given the evidence suggesting actual false advertising summarized in pp. 101-103, the results of this survey could demonstrate that relevant consumers' reliance on any false statements materially affects their decisions when choosing to apply for scholastic organization memberships.

If called in this case to testify as an expert at trial I expect to prepare exhibits to aid my testimony. I also reserve the right to supplement and/or amend my opinions if additional information or evidence is provided to me.

Respectfully submitted this 30th day of August, 2024

A handwritten signature in cursive script, reading "David J. Franklyn", followed by a horizontal line.

David J. Franklyn